[श्री राम नरेश कुशवाहा]

बारे में कड़ी कहां तक आगे बढ़ी है। साथ ही साथ यह भी बतायें कि बाढ़ का स्थायी हल क्या कर रहे है ?

MR. DEPUTY CHAIRMAN: Now. Mr. S. W. Dhabe.

महाराष्ट्र में तो बाढ़ आई नहीं, या आयी है ?

SHRI S. W. DHABE (Maharashtra): Sir, if you say that there are no floods in Maharashtra but it has always been affected by floods. Sir, my observations about this discussion that the statement given about West Bengal is totally wrong.

MR. DEPUTY CHAIRMAN: We shall continue this Calling Attention Motion after 5.00 p.m.

सदन की कार्यवाही ढाई बजे तक के लिए स्थगित की जाती है ।

The House then adjourned for lunch at three minutes past one of the clock.

The House reassembled after lunch at thirty-two minutes past two of the clock.

THE VICE-CHAIRMAN (DR. (SHRIMATI SAROJINI MAHISHI) in the Chair.

ANNOUNCEMENT RE. GOVERNMENT BUSINESS DURING THE WEEK COMMENCING 30TH JULY, 1984.

THE MINISTER OF STATE IN THE DEPARTMENT OF PARLIAMENTARY AFFAIRS (SHRI KALP NATH RAI): With your permission, Madam, I rise to announce that the Government Business in this House during the week commencing 30th July, 1984, will consist of:

1. Consideration and passing of:

(a) The University Grants Commission (Amendment) Bill, 1984.

(b) The Sales Promotion Employees (Conditions of Service) Amendment Bill 1983.

2. Consideration and passing of the following Bills, as passed by Lok Sabha:—

(a) The Industrial Disputes (Amendment) Bill, 1984.

(b) The Electricity (Supply) Amendment Bill, 1984.

(c) The Levy Sugar Price Equalisation Fund (Amendment) Bill, 1984.

(d) The Estate Duty (Amendment) Bill, 1984.

(e) The Multi-State Cooperative Societies Bill, 1984.

(f) The Industrial Reconstruction Bank of India Bill, 1984.

(g) The Bengal Immunity Company Limited (Acquisition and Transfer of Undertakings) Bill, 1984.

THE VICE-CHAIRMAN (DR. (SHRIMATI) SAROJINI MAHISHI]: Now, Resolution No. 1. Mr. Hansraj Bhardwaj.

RESOLUTION REs APPOINTMENT OF A JUDICIAL REFORMS COMMISSION

SHRI HANSRAJ BHARDWAJ (Madhya Pradesh): Madam Vice-Chairman, before I take up my Resolution, I would like to welcome you as one of the Vice-Chairman of this House. We have all known you. You have had a long career as a parliamentarian and Minister of State in the Ministry of Law, Justice and Company Affairs. We take this opportunity to welcome you here as Vice-Chairman.

THE VICE-CHAIRMAN [DR. (SHRIMATI) SAROJINI MAHISHI): Thank you.

SHRI HANSRAJ BHARDWAJ: Madam Vice-Chairman, I move the following Resolution:

"Having regard to the fact that the existing judicial and legal system needs wide ranging reforms so as to become an effective instrument of social change and also to provide socio-economic justice to the under-privileged and the weaker sections of our society, this House

is of opinion that Government should appoint a judicial Reforms Commission headed by a Judge of the Supreme Court so as to suggest ways and means through which a sound legal edifics suited to our national genius and adapted to the needs of our people, is developed."

Madam Vice-Chairman, before I proceed to speek on this resolution I must submit that while addressing this august House, whatever facts and whatever submissions I make before this august House, in making them I am motivated only by one consideration and that is our commitment to the poor masses of this country. I have absolutely no doubt that the basic foundation of our legal policies is sound. The defect, wherever it is, has to be clearly noted and steps have to be taken to remove the same. I am also aware of one fact that there cannot be any controversy over one thing, that the law proceeds and is born out of the conditions of the society. There cannot be any law which does not take note of the growing needs of the society. As a matter of fact, law and society affect each other to the extent that they are dependent on each other.

Madam, with this background I would briefly state as to why I said that our legal policy is sound. My submission is that as early as 1928 Pandit Motilal Nehru in his report as chairman of the committee on the Constitutional System of India before the independence of the country, laid down the very basic foundation, the pillars, of our future legal policy. He emphasised three things: that the law must stand for a socio-economic change, that the law must create a welfare State and that the law must become an instrument of service to the underprivileged and weaker sections of the society. Madam, you will recollect that our leaders exhorted on many occasions that the freedom which we got on 15th August, 1947 was only a political freedom and that freedom had to be strengthened by further bringing freedom of justice by giving socio-economic justice to the masses of this country. And I am reminded of Pandit Jawaharlal Nehru's speech on 26th January 1950 when India became a sovereign republic ,he said that this political freedom will only become an end in itself when we give to our masses economic freedom, freedom from injustice and freedom from exploitation. This is the back-ground of our legal system. This is the background of our commitment to the masses of India. This is the background of our commitment to the Constitution. This is the background which has been followed ultimately by our leader, Mrs. Indira Gandhi. She has always said, the law must stand for social change; it cannot be static, it cannot be an apologue. This is the basic sound foundation. But we shall pause here for a moment and see whether our legal system, our judicial system is proceeding in the correct direction. It is our duty as parliamentarians sitting here because, you will appreciate, Parliament is the pulse, is the representative, of the people of India, and if it fails in its duty to have a look at the system operating and the defects that existed continue, it will never be excused by the people of this country. When the people can give unto themselves a constitution, cannot they give unto themselves a sound legal system? This is the question that is before us today. I am one of those who are in this profession and I share this anguish too because when you go to the Supreme Court, to the High Court, to the trial court, we cannot really keep ourselves mum...when we see millions of people who are unable to reach the door of justice. This is the problem of today. You have to pay a very high price. You have to buy up a counsel to go to the court. Why? The answer is that we are dependent on an Anglo-Saxon system of jurisprudence. It is so intricate. It is so lengthy. It is so frustrating. And what to speak of those innocent, illiterate people? We lawyers who have put in 25 years of practice cannot properly understand it. Even the Judges who interpret the law go against one another. They are divided in their opinions in all the judgements. You kindly see. I will briefly draw your attention to one of the most salient feature which affected the whole nation today. It is about Parliament's power to amend the Constituion. Madam, you have been a lawyer yourself. You have also been a law teacher. You remember what was the state of affairs from 1951 to 1966.....

SHRI SANKAR PRASAD MITRA (West Bengal): She was also a Judge.

SHRI HANSRAJ BHARDWAJ: I will add to my knowledge. I knew she was a Minister and is now our Vice-Chairman.

Madam, you will remember what was the state of affairs in Shankari Prasad case and Sajjan Singh case. Then suddenly Golaknath and Keshavananda Bharati came. They say that people of India who are represented through the Parliament cannot amend our Constitution. We cannot amend the Constitution. Why? Because in Keshavanand case, they say we cannot amend without defining the basic feature of the Constitution. Justice Gajendragadkar said there is no bar; but suddenly other Judges say that Parliament has no power to amend the Constitution.

Is it not time to see whether our judicial system is going to the service of the people or it is going against the people? If the judiciary puts feters on the Parliament, it is the Parliament's duty to remove those fetters and liberate itself. This is my submission. If the people lose faith in the system, then the system itself will collapse. This is my first submission.

I will not take more time of the House on this. I will now come to another point. Why is the system defective because of which it will collapse? There are two reasons. First, it is very costly. Secondly, it is dilatory. These two aspects have to be examined. Justice is very costly. A common man may have to invest his savings of whole life to go to the highest court of the land. Then perhaps he will reach only the doors of the court, may not reach the inside of the court and then he is uncertain of what he will get. This is because of the cost aspect. Whether a public servant or a working labourer or a harassed lady, they will have to pay this much cost. If there is a seniority-juniority case, the person has to engage a lawyer. I know many Judges in Delhi wanted me to suggest the names of lawyers who could present their case well in Supreme Court. The Judges will have to borrow them and pay them fees. I may be wrong or may not be absolutely correct. It is for those who are at the top to remove the defects in the system. My job is only to make submissions and if in that process my voice reaches the desirable quarters, I will be satisfied.

Now the costs are going up. Why? Because we want to make the Supreme Court the monopoly of the privileged class and make the courts available only to the rich. This is the conspiracy. This is the real aspect which we have to consider. There is now a monopoly section of the bar. There is a court functioning you get one stay in a fiscal case, in a tax matter, and take thousands of rupees as fees and become rich overnight. One stay means loss of crores and crores of rupees to the Government and there is no guideline at all in the courts today as to how you are going to have that remedied because the courts have not so far laid down the guidelines as to how, where and when we have to talk about the system. You weaken the treasury and a weakened treasury cannot run the country. How is the treasury weakened? You get the stay in a fiscal case, in a tax case and there is loss and so, the Government will go on printing currency notes. But the question is that taxes will have to be realised. It is not my tax or your tax which matters and it may be fifteen thousand rupees or twenty thousand rupees which we may pay as tax. But the question is that lakhs and lakhs of rupees are involved in excise cases, lakhs and lakhs of rupees are involved in other tax cases, and these cases are stayed. And, you see, the stays are not granted on the submissions of a small counsel or a counsel travelling from a countryside or a district or taluk level. There is a specialised class of lawyers who are engaged and I will be failing in my duty if I do not mention one thing. Today, it is like this that either you have ot fix the Bench or fix the lawyers. This is the thing now and you might listen to me if you are not already listening. This is what is happening. I am also a lawyer. But I am saying it with a pained heart. So, this is the cost aspect.

Now, I come to the delay aspect. Now, there are reports about delays and I need not say much. There are delays after

delays and cases after cases which are piling up. Why? They are piling up because the very system is defective. The cases are listed State-wise in the courts. One case in the registry is the Bihar case, another is the Bengal case, then the Gujarat case, then Haryana case or Punjab case and it goes on like this. There is no proper indexing of cases according to the subject just as tax cases, labour cases, criminal cases, civil cases or miscellaneous cases. The cases should be properly indexed. Then, you have also got a few sections which are controversial or which are to be interpreted. If the cases are indexed like this in the registry, then the court can from benches. Suppose there is a labour matter and only one point is involved in all the six hundred cases. The court can easily fix an early date and decide all the six hundred cases on one day because only one point is involved. But that is not happening. Recently—I will not name the Judge—there was a case in the Supreme Court in which a judge wanted to lay down the guidelines as to how in a fiscal matter the stay could be granted. It was referred to a larger Bench, but subsequently withdrawn. I am challenging this because, today, you will find that many judgments are not given by the courts and two years or three years or four years have gone by and judgments have not been given on very vital issues affecting the nation. So, this is also because of the system. I am not accusing any institution and I am not raising my finger against anybody or any institution. Whether it is deliberate or not I cannot say. But this is what is really happening. So, you must consider this aspect also and you have to take measures so that some type of a system is evloved and the cases get expedited. You have got two thousand cases only on one subject. You say that these two thousand caess can be decided on one day. Why can't we accept this type of a system? Now, the courts, overburdened as they are, cannot do that much of work. There is an institution—I am telling you from personal experience—called the Court Masters. I have been seeing them sitting from 10-00 A.M. till 4-00 P.M. till the judges rise, and then, they have to type out the whole matter and they go on till 9-00 P.M. and again in the early morning the next day they have to come back. There is no staff to type out the order passed by the courts and the Court Master to do that. This system, although it is to be looked into by the Supreme Court itself, has not been examined and this problem has not been solved notwithstanding the many protests from the staff side. This system has to be looked into. So, these are all very broad matters on which we will have to bestow our thought and decide as to how we can get rid of such a system.

Madam, I will now come to a very important feature which really creates the problem for us and that is that when we go to the court, the society is away from the court. Today, India is a vast country, and we have inherited the Anglo-Saxon laws. But we have not inherited that spirit. If you read the legal history, you will find that the English judges, the American judges, etc. used to travel on horseback to the country-side and hold their court sittings there, the circuit courts. I started working recently. But even then I can say that there were circuit courts. The Sessions Judge used to travel from one district to another district and from there to another district and at least four or five districts he used to cover alone. But, today, even the magisterial courts are functoining in Delhi and the people around Delhi have to come here even though they have no transport or any such sort of thing.

We have got the Supreme Court in India. A common man sitting in north-east or south-west has to travel to Delhi. Why can't we take justice to the door-steps of the people, if you have really a commitment and what was pledged by our leaders? My submission is that you cannot do it immediately. But you can think of doing it and say that you are doing this. So, Madam, this is another thing to which I would like to draw the attention of the House.

Now, there are two aspects which are also creating some sort of problem in our judicial system, that is, the jurisdiction of the Supreme Court under 136. This is every day being used in matters which do not concern it. The Judges of the court have started devising their own system of

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administration of justice. A rich man has no problem but a por man will have to get his papers cyclostyled, engage an advocate and all that. Now there is another system which is being evolved; One who can really come to Delhi and file some sort of public interest litigation. It is a welcome thing. But still you should lay the guidelines in which cases the public interest litigation can be there. Even we have problems. Cases like the Bihar blindings have attracted the attention of the Supreme Court. It is a welcome thing. Wherever there is misuse of law, courts must intervene. Judicial review must remain the backbone of our system. But the question is that even for a small matter you waste the time of the Supreme Court, on a small petition. It is not fair. 136 is being misused. 226 was an extraordinary measure. Now it has become the most ordinary measure. So these things will also have to be looked into because the Supreme Court is the constitutional court, and it must preserve that status and we must really do something whereby the arrears can be cleared. My suggestion is—of course, I am not that very experienced; my senior colleagues who will speak will dilate on this—my suggestion is that we must create labour tribunals, administrative tribunals, service tribunals and tax tribunals and leave the Supreme Court as only a constitutional court, so that, it can guide the nation as constitutional court. But this is not happening. It is occupying itself with various matters which can really be left to other courts to be decided. So, therefore, it is time when the Government should look into these aspects so that the whole system can be gone into afresh and whatever changes are necessary they can be made at the apropriate time. Otherwise, mind you, Madam, people will not wait any longer.

The Prime Minister has done very well by introducing the 20-point programme. It has given relief to the people. But the question is this. What is happening to the 20-point programme implementation? It has again to be looked into. I have seen with my own eyes that people are given lands by the Government—weaker sections, the Harijans, the Adivasis; they are given pattas of land, saying, "This is your own land". But they are not being allowed to occupy that land, because the moment an officer goes there he says, "I will see how you occupy this land". What is the use of giving patta? You must see to it that the land is occupied by him and his possession is maintained. That is also one thing which the laws of today must see to it. An orthodox person may say, "Well, this cannot be done". But if you cannot do it, then you cannot satisfy the hunger of the masses. As a democratic society India must take note of this drawback, because the vast majority of our people are poor. It is a different matter that one person goes from his village and comes to the city and becomes well-to-do. But the question is this. Eighty to ninety per cent people of this country are poor. The working class—you may say the white-collared—I know are also poor in relation to the administration of justice. So this system has to be remedied. We can provide legal aid, we can hold camps, we can do other things. Something will have to be done. And for that it is not necessary that you just decide in a day or two. We have to have a deep, deep thought on this; we have to have a national dialogue, we will have to have mutual consultation with trust and confidence in each other and we have not to contradict each other on all these issues because they concern every society, every political party, every person.

Even Judges have also come to the Supreme Court. We have the Judges of the High Court coming to the Supreme Court. So, those problems are everywhere. So, when we talk of the judicial reforms, we have to give that consideration that our efforts should be that law should correspond to the sentiments of the society. Law must respond to the growing sentiments of the society. That should be the basic approach.

Now, I will come briefly to the trial courts. Trial courts in this country are ill-organised. Our economic system is organised at the block level today if I can properly understand it. The organisation of the economic units is going from the block level upwards. But our judicial system is organised at the district level because you have a District Magistrate—

earlier you had a District Judge—and everything below him and only at the district level. So, this system is also faulty because if you have to organise the judiciary, you have to take that the judiciary has to serve not only the elite urban class but also those far, far-located persons in the farthest portion of the country. You have to send assistance to him. So, it has to be orgainsed that if within 20 miles or 30 miles there is no court, you have to locate a court. The States, of course, have to do this because the Central Government has nothing to do with this type of organisation. But this should also be looked into. This is the type of approach that is needed because frustration after frustration there is only revolution. So, we are putting at the appropirate time these submissions before you.

I have briefly dealt with the judicial system. Now, I will draw your kind attention to the legal system. Again there is a certain type of conspiracy going on. I cannot understand who is behind it. I will not accuse anybody. We have recently the poor men coming as lawyers from the district or taluk or village level. When I was a child, there were hardly any lawyers on our side. There were only one or two at the district level. So, we used to feel what person a lawyer must be because all the freedom fighters and all the big political leaders were lawyers. So, we were very eager to become lawyers. And fortunately my father worked hard so that I could become a lawyer. But what I find today? When this profession is available to poorer and the weaker persons, there is a systematic restriction that is being caused and imposed. They want that the law course should be for five years. If you make the law course for five years, what will happen? Even a middle-class man or a middle-class family will not be able to give the law education to a child. You cannot wait for five years—ten plus two and then five years which is 17 years. Now, we have got two years or a maximum of three years. And the same course is to be for five years. Madam, we can think of improving some standards. We can have one year for legal training and another for mock trials in the institutions and better training. Then you can be better equipped and go to the courts as a better erquipped person. But that is not the intention at all. A Law School has been formed at your place, Bangalore. And see the list of the people who are behind it. I will not name them because they are not the Members of this House. But, you see the list because your are concerned and you are committed to the poor. They are saying, "We are the founders of the Law School in Bangalore. And here is a system which we are evolving on the Harward pattern and we will take people and educate them for five years on this pattern." Madam, they are serving the cause of the elitist class, that monopolistic class in the legal profession which is monopolising both the legal profession and the judiciary. We are registering our protest against such a system. I am saying so. I have no dearth of cases. I am better equipped than many. I do not boast of my practice. But I can tell you that I am still eager that I must stand by the side of all my brothers in the villages. They should all be allowed to come to the law classes and they should go to the courts as lawyers within two years or three years of passing their graduation.

3 P.M.

At least you leave this aspect to the poor man so that he can defend himself, understand these intricacies and these procedural wrangles of the Anglo-Saxon law. We cannot really tolerate this type of a thing. I wanted purposely to raise these issues through this Resolution. I wanted to draw the attention of the hon. Minister and the House to this aspect. I am proud we have a very matured Law Minister. He has put in more practice than my age. I expect from him that after having risen to such great heights in his life, he must look into the cause of the society now. I would appeal to him, and I am not saying all these things only because of emotion but because of experience, that these things are very material and material at this time because tomorrow will be too late. You must interfere in these things, this type of behind the scene efforts that will lead to widening the gulf between the legal profession and the common man. This is most dangerous aspect.

Then I would urge upon the Government to see that a proper system of education in laws is evolved. We are no lon-

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ger interested in what happened in Rome, in what happened in Greece. We are only interested in what our leaders and freedom fighters committed to our people, how our constitutional system can serve our people better, how our legal system can improve the lot of the people and how our laws can give satisfaction to the common man so that he can say that no doubt God made me poor, but I am not considered poor in the society . I would like our friends in the civil service to realise and pave the way so that if at all there is an injustice to them, they will not have to waste their G. P. Fund or provident fund in the courts. Such a system must be evolved. We have to defend the society. We have to work in the service of the society and again a system must be evolved where a lawyer is taught in the course of his education itself that he is not a mercenary but he is going into the service of the society.

I am expecting some more contributions from my colleagues who have been judges here, who are senior in the profession and from the most senior in the profession that is the Law Minister. This is what I have briefly to say.

THE VICE-CHAIRMAN (DR. (SHRIMATI) SAROJINI MAHISHI: Shri Hansraj Bhardwaj has moved his Resolution. Now there are two amendments. The first amendment is by Shri Chimanbhai Mehta. Mr. Mehta, are you moving the amendment?

SHRI CHIMANBHAI MEHTA (Gujarat): Madam, I beg to move:

"That in line 3 *after* the words 'social change' the following words be *inserted*, namely:-

"to bring about casteless and classless society based on the principles of scientific socialism"

THE VICE-CHAIRMAN (DR. (SHRIMATI) SAROJINI MAHISHI: Another amendment is by Shri Chaturanan Mishra. Are you moving your amendment?

SHRI CHATURANAN MISHRA (Bihar): Madam, I beg to move:

"That in lines 8-9, *for* the words 'so as to suggest the words 'to report within one year of its Constitution', be *substituted*."

THE VICE-CHAIRMAN (DR. (SHRIMATI) SAROJINI MAHISHI): The amendments are moved. If any Member is desirous of speaking, he may speak.

SHRI CHIMANBHAI MEHTA: Madam, the learned hon. Member, the Mover of the Resolution has very ably defined the present-day situation in legal affairs. Ultimately what is the legal system? Legal system is the reflection of the socio-economic condition or the superstructure of the economic foundations. Therefore, the legal system as it obtains today also sometimes strike down the progressive legislations passed by Parliament or by State Legislatures. Recently, in Gujarat, the Gujarat Legislature passed a very important legislation on co-operative reforms but it was struck down by the High Court. Now the Government is going to the Supreme Court.

What I want to say here is that our learned lawyer has referred to the monopolisation of the legal profession.

I want to say that when you are going to have a legal reforms commission, as suggested, and if the Government accepts it, then let us consider nationalisation of this legal profession, because today the luxury of employing very able lawyers in the Supreme Court and High Courts is available only to the rich. Poor people can never have the able or the eminent lawyers. May I submit that legal profession that is based on making money I do not want to run them down: this is the situation in our society is basically not interested in giving legal justice, but interested in doing service to a client who pays. I have seen with my own eyes that a prominent lawyer was standing when a murder was committed and the murderer went to that prominent lawyer who had seen him committing the murder. That lawyer got him acquitted because he was paid very handsomely. Communal rioters, anti-social elesmugglers gangs, all have the services of the eminent lawyers. Therefore, it is

my submission that let us nationalise legal profession. That will also help in fighting against those elements who are creating law and order problem. Law and order problem is not the problem only of the Home Ministry. It has wider implications, and that has to be looked into.

While moving my amendment, I have suggested that this legal system is a reflection of socio-economic conditions and our society—Indian society particularly is unique in having one feature, and that is the feature of casteism. The influence of casteism and communalism is corroding our society and also partly influencing judiciary. Something has to be done about this casteism. It is said, let us educate the people and do away with casteism.

I want to say one thing, and that is about social justice which is, it is said, implemented through the democratic system, because democracy gives scope, the method and instrument for social justice. In our country, democracy is implemented through elections. Let us see whether elections have strengthened casteism or not, and if casteism is strengthened, then where is legal justice; where is social justice today? Because of the casteism today, what is happening in our society is that gradually our legislative assemblies are turning themselves into a federation of castes and communities and instead of being an amalgamation or a conglomeration of the political parties. This casteism is reflected, and very powerfully reflected in making the Ministries, at least at the State level. Now, in such a situation, what sort of social justice one would get? The legislatures are caste-based to a great extent. In regard to formation of Ministries, whether they are of this party or that party, in today's situation in India, they have to go by caste considerations. Such Ministries are not able to and are not capable of solving the problems increasingly becoming intensive. They are no match to our bureaucracy. The bureaucracy sometimes knows much better than those who try to rule over them.

The Mover of the Resolution has rightly stressed the need of ensuring social justice. This is the fundamental aspect. But I would urge this House to ponder over this thing. Unless we do away with the menance of casteism, we will not be able to do much. Our election system is strengthening castiesm and, therefore, the election system should be changed. In the elections, an individual is contesting in the name of the party. Therefore, people look at the individual and they try to understand his attributes, they see to which caste he belongs, to which religion he belongs. They do not consider to which party he belongs, which is a very vital factor. They elect the candidate on the basis of his individuality, on the basis of his caste and so on. When such people are elected to Parliament and State legislatures, they are not able to deliver social justice. That is why, I would say, we should change the present day election system. It should be so changed whereby only the parties would be contesting rather than the persons. In such an election system only the performance of the parties would be discussed and not that of the individuals. In such a system, the people will take into consideration only the programmes of the parties, what they have done, what has been their performance and what they are going to do. Only these things will be discussed, instead of the individual, which is the case today. My friend wants to ensure social justice through legal reforms. I say, unless this fundamental work is done, it is going to be a difficult affair because under the present-day system, casteism has taken so much deep root that nowadays, the anti-social elements belonging to the different castes become the leaders of these castes. The degeneration has taken place in such a manner that although in our democracy, people's wish would be supreme and should be supreme, things are manipulated. You know what happened when the Janata Party collapsed in 1979. And for this, casteism was also one of the important factors. Pandit Jawaharlal Nehru and Shrimati Indira Gandhi are all supreme figures. There were some others. They cannot be influenced or challenged by caste or would collapse as it happened in 1979. But such figures cannot be found in history often. There has been a

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steady deterioration. That is why, I would suggest that we should consider this aspect from this angle.

Madam Vice-Chairman, I agree that the supremacy of Parliament should be accepted by the new legal system. Let the Commission be set up and let it lay down these things. Any measure that moves our society towards socialism cannot be challenged. Socialism should be the basis of the legal system and this should be enshrined in the Constitution. We know the Keshavananda Bharti and other cases, Judiciary would try to be liberal. But what will happen? Having given up the content of progressive movement and progressive advance, in the name of just interpreting the law technically, we find that reactionary and anti-social elements are getting away. This should not happen. I would also say that our society is suffering from these things, increasingly. Judiciary at the lower is not immune from the vices from which some of our political workers and bureaucracy suffer. Judiciary is the last hope. If a person goes to the judiciary and if he finds that something is being done from a motivated angle he is bound to be demoralised. So, to prevent this demoralisation Government should see what can be done about this.

My friend is absolutely right in saying that delayed justice is too much delayed in this country and delayed justice is no justice; that is what he has said. But how to shorten the period, how to make justice available to the poor? He has said that justice should go to the door of the people. In Gujarat recently we have set up people's adalat, that is, 'Lok Adalat' as it is called. It is a good experiement. We have been benefited that is my primary observation, although I am not a lawyer. Therefore, I would not say much of the niceties or complexities of the whole thing, but that is very much required.

Then there have been some ideas that High Court should be only one at one place in the State. Of course, High Courts are supposed to deal with the law, but that can be done at different places in big cities. In Gujarat we had a High Court in Rajkot also, but once the Gujarat State was formed that Court was taken away. Our Government has appointed a Commission to go into the matter. The Commission should go into the question and a High Court bench may be set up at Rajkot, it should see that judiciary and that other facilities are made available to the people without much trouble. The Commission should work out all these details.

My last point is, so many 'stays' are granted in the courts, even on flimsy grounds. Perhaps thousands of stays are being granted by judiciary in this country, as if the Government is doing something wrong. *Prima facie* reaction of judiciary is to grant stays when asked. Even in the matter of transfers of police officers, of Collectors, of Deputy Collectors or even of Clerks, judiciary is granting stays liberally. I fail to understand, what is the function of judiciary? If the executive is to be obstructed at every level, the executive is going to be ridiculed. It cannot be the function of the judiciary to ridicule executive or legislature. Therefore, I suggest that this sort of Commission, as the hon. Mover has demanded in his resolution, be set up immediately and should be headed by a person who believes in socialist philosophy. Hon. Law Minister is here, he is much more learned and experienced. I have just now said that I am neither a lawyer nor in the profession, but a person who is dealing with the masses. So, I can say that an eminent judge or a very prominent judge alone would not serve our purpose. We believe in socialism. So many parties are also agreed on that. It is there in the Constitution. There is nothing wrong in seeing that the persons with the progressive background are appointed on this Commission. While appointing the Commission it may not be written there that the judge should be a socialist. Nobody says that, but you should have that in mind. Eminence and also the philosophy of social change should go together. Thank you.

SHRI ALADI ARUNA ALIAS V. ARUNACHALAM (Tamil Nadu): Madam Vice-Chairman, I would like to say a few words on the Resolution moved by hon. Member, Shri Hansraj Bhardwaj. In his Resolution he has greatly stressed the need of appointing a judicial Reforms Commission so as to provide social and economic justice to the weaker sections, downtrodden and underprivileged. In establishing the socialist, secular, democratic society, even though our roads are different, the terminus is the same. To remove disparity between the rich and poor, untouchability between the higher caste Hindus and Harijans and inequality among the people, political parties are, no doubt, much enthusiastic and energetic. The founding fathers of our Constitution had already envisaged all these views with dexterity and dedication. That is why in the Preamble of the Constitution itself, they have enshrined these principles. Moreover in Part IV of the Constitution under the Directive Principles of State Policy, they have explicitly articulated the tenets of a Welfare State. But it seems that our hon. Member is quite satisfied not only with the provisions of the Constitution but also with the present legal system which is based on jurisprudence of Anglo-Saxon laws. We have adopted this system not because of its meritorious position but because of the British rule over India for 200 years. The British derived this system from the Roman Law. We know it well that Roman laws in those days were noted for eminency and enrichment. Therefore we have inherited an excellent system. We need not feel inferior for having this system which is being followed in most of the democratic countries.

Some of our bigwigs are thinking of introducing the principles of Arth Shastra, Rigveda and Varnasharam Dharma. Every system is having its own defects and merits. No system is free from defects. No system is cent per cent perfect and candid. What I want to say is that there is no insurmountable obstacle in our system. Our system is not at all an impediment o our progressive or socialist policy. Nowadays it is a dogma among the politicians that the courts are the greatest impediment against socialist policy and progressive measures. The judges are petrified with conservatism. They are armed tyrants but without armoury. Unless they are stripped off from the present position, implementation of radical measures, they say, would become illusive and dreamy. I would like to know in what manner, in what way the courts are obstructive. Did they function against the abolition of Zamindari system? Did they function against the Land Reforms Acts? Did they refuse to endorse the policy of nationalisation of banks? Did they fail to protect the interests of the minorities? Did they fail to protect the interest of the Harijans? Within its ambit the judiciary has done its best.

This House may agree with me that judiciary must play the role of "sentinel on qui vive". To play this role effectively, independence of judiciary is quite essential and inevitable. The courts are the Palladium of our freedom. They are bulwark against the agressive attitude of the executive and legislature. If any steps are taken for having a committed judiciary, it will be injurious to the very existence of the entire structure of the society.

The controversy between the judiciary and legislature over the supremacy of power is not a new one in history. Since the days of Montaigne who was mostly responsible for the principle of separation of powers, I believe this polemic is going on in varied shapes in different countries. No doubt the blast of protest against the powers of Supreme Court in interpreting the laws and creating the judge made law is blowing hot from all directions. Gibben remarked:

> "The discretion of the judge is the first engine of Tyranny."

This view has been endorsed in terse terms by Chief Justice Hughes as "The Constitution is what the Judges say it is." It is argued that representative Govern-

[Shri Aladi Aruna Alias V. Arunachalam]

ment suffers a lot; its administration is paralysed sometimes and it becomes helpless. That is why Prof. Laski stated: "What, in short, is interesting in representative Government is not its anatomy but its pathology." The controversy between the Supreme Court of USA and its President reached its peak during the period of Franklin Roosvelt. Franklin Roosevelt frankly charged that the "Supreme Court of America never looked forward but wished to take the country to horse-and-buggy days" In spite of the fight and ardent protest, the Supreme Court of USA won the war of controversy only because people were behind the Supreme Court.

In our country also this controversy is not less vigorous. From the inception of our independent Constitution, the Legislature and the Executive are always carping and cavilling against the functions of the courts. Fortunately, Pandit Jawaharlal Nehru adopted a balanced view between the two wings. He was not a party to either wing. He kept his neutrality with alacrity and sapience. He did not add fuel to the flames of the controversy. He warned the courts not to act as the third chamber of correction but, at the same time, he respected the independence of the Judiciary in deed and demeanour. After the demise of Nehru, steps were taken, unfortunately, to introduce the system of committed judiciary which is dangerous to the nation. It is a step against democracy; it is a step against the welfare of the nation; above all, it is a step towards tyranny.

I welcome reforms in the Judiciary without affecting the independence of the Judiciary. Madam, I conclude by quoting a few words of Macaulay:

> "In peace or in convulsion, by the law or in spite of the law, through the Parliament or over the Parliament, reforms must be carried."

Thank you, Madam.

SHRI BAHARUL ISLAM (Assam): Madam Vice-Chairman, before I go to make my own points I want to dispel a misunderstanding of the oft-quoted expressions "committed Judiciary" and "committed Judge" as just now expressed by my predecessor. These two words have been used by a section of the people often. What is the meaning of "committed Judiciary" or "committed Judge?" If a Judge delivers a judgement even rightly in favour of the State, he is called a 'committed Judge'. If his judgement is against the State, he is called a very bold and 'independent Judge'. But if a Judge is committed to the Constitution, can he also be called a committed Judge? Certainly every Judge and the whole Judiciary must be committed and committed to the Constitution of India. Unless the Constitution says what is the function of a Judge, what is the function of a court in interpreting a law, the function of a Judge and the Judiciary must be to interpret it keeping in view the Preamble of the Constituion. What does the Preamble say? Amongst other things, it says:

> "We, the people of India, have solemnly resolved to constitute India into a soverign, socialist, secular, democratic Republic."

If in interpreting a particular provision of the Constitution, in interpreting a particular provision of any other law, I keep in view that my judgment must be such that it helps establishment of a socailist society, a secular society, a democratic society, can I be called a committed judge? Therefore, with respect I submit that it is very often a misuse of the expression, 'a committed judge' or 'a committed Judiciary'. If the judge is committed, if the Judiciary is committed to the Constitution of India, to the Preamble of the Constitution of India, he is most welcome, in my respectful submission.

Now the subject before us is whether a Judicial Reforms Commission is essential. The Resolution moved says:

> "Having regard to the fact that the existing judicial and legal system needs wide-ranging reforms so as to become an effective instrument of social change ....."

Social change is necessary in India. Nobody can say: No. Our country is not full of people but full of castes, communities, and so on and so forth. I am a

Muslim; he is a Hindu; he is a Kayasth or a Brahmin. Nobody says, "I am a man". I welcome the amendment brought by my friend from Gujarat. It is about a casteless and classless society. Everybody in India must try to become a 'man' first because man is superior to anybody else, then an Indian. And an Indian is superior to a Brahmin or a Hindu or a Muslim or one belonging to Scheduled tribe. That reform is necessary. The Resolution further says:

> ".....to become an effective instrument of social change, and also to provide socio-economic justice to the under privileged and the weaker sections of our society....."

Now a sitting Judge of the Supreme Court is reported to have said that justice does not reach the poor people; that the Supreme Court appeared closed to them. The President is reported to have remarked in Bombay in a conference that the poor people shudder to go to the court. And our Prime Minister very rightly observed in the World Conference of Jurists here last year that the Judiciary has failed to cater to the needs of the people and the people should not be fitted into the legal system. She very rightly said so. Now what is happening? What has the Judiciary been doing so long? I am not saying of all judges but of most of the judges naturally. Maybe by training, maybe by upbringing, they are in favour of *status quo*. Madam, you are yourself a lawyer and you know that in a High Court or in the Supreme Court, before you start your argument, it is the habit of most of the lawyers to throw decisions of the Privy Council, of the American court, and so on. You flood the judges with a number of decisoins of America, Australia, Privy Council, and of our Supreme Court, of some ten or fifteen years ago, and so on and so forth. But what is most essential? It is known to everybody, to you, to me, to an ordinary citizen, that law as the administration of justice is not as difficult as it appear to be. It is very simple. You go before the court with a case. What is the first function of the judges? Very erroneously sometimes a judge is addressed as learned Judge. Similarly an advocate is addressed as learned advocate. I resented it; still I resent it. Because if I am a learned Judge, I have nothing more to learn. Even a man like Newton use to say: "I am like a little child playing with pebbles on the sea-shore; but the vast ocean of truth lies unknown before me." We know people of limited knowledge are called learned Judges or learned advocates. A better expression would have been 'a learning Judge'. You go on learning. You can never complete your learning during your life-time. It is impossible. Not at all possible. Being a Hindu, have you been able to complete the study of the Vedas? Have you been able to complete the study of the Geeta? Being a Muslim has anybody been able to complete the study of the Qoran? Being a Judge, have you been able to have a complete grasp of the entire legal system?

I give you one example. I was dealing with a case of divorce when I was a Judge in the High Court at Gauhati. The question that came up before me was whether there was a valid divorce in the Muslim Law. The first judgement on the point was by Justice Costello of the Calcutta High Court. Justice S. P. Mitra knows it. He laid down a law that a Muslim man—kindly listen—has the absolute power to divorce his wife at any time without rhyme or reason. That is possible if a woman is a chattel. I can marry a woman if she is a chattel, throw her into the river or divorce her tomorrow and marry another wife. Is it not astounding? Can the teachings of a great religion be to that effect? And curiously enough, that judgement was held to be a good judgement by subsequent decisions of the Madras High Court and some other High Courts as a correct law. And that law has also been quoted in commentaries on law, in commentaries including the commentary on Mohammadan Law by Justice Hidayatullah. I shuddered that if this be Muslim law of *Talaq—I* must cease to be a Muslim. I ransacked the whole Qoran. I found the law entirely different. The Qoranic law is this. It is true that the husband and the wife may sometimes fall out and a proposal may come that there be divorce. Then Qoran

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says that before you do it, the woman will select an arbiter from her side. The husband will select an arbiter from his side. Let them try to reconcile with a time lag. Let the passions cool down. If they cannot reconcile let there be divorce. That is one. At another place the Qoran has said of all things permissible, the most hated by Allah *is talaq*. Now, what is the gist? That law was laid down by Justice Costello. He came with that decision, and that decision up till now has not been set aside by any decision of the Supreme Court. I differed from it. Later on my decision was accepted as the correct law by the Division Bench of Gauhati High Court, and later on it was noticed by the Supreme Court also.

What I am submitting is, naturally a lawyer will say that this is the existing law, this is the corerct law as it has not been set aside. But horrible. Therefore, the simplest thing for a Judge to do is to study the facts, the points involved, the relevant constitutional and legal provisions, think over them, think imaginatively, try to resolve them before you come to a decision. Sometimes decisions are so confusing. These decisions—too many case laws with great respect I submit—have eaten into the vitals of the intellect of our young lawyers. They have ceased to think. If a lawyer has to go to the Supreme Court tomorrow, he will go to a senior. The senior will ask him to find out 100 decisions, at least 50 decisions of different courts Indian and foreign, to look at the digest and find out case laws. Decisions first, facts second, and the law involved third. Therefore, all confusion. Therefore, the subsequent argument placed before the court is misleading. The judgement becomes incorrect, bound to be. Therefore, in my humble submsision, the first function of a Judge is to master the facts, to collect the points involved, the Constitution and the legal principles.

Now, about the duration of the argument. Lawyers go on arguing. If I am a Judge, I may be an intelligent Judge, a dull Judge or a mediocre Judge. If you cannot convince me by argument for two hours, do you think that you will be able to convince me by argument in ten days? I will understand nothing. In the Supreme Court, the Judges come always ready with their brief, thoroughly prepared. If the Judges with thorough preparation do not follow the arguments for two hours or one-hour-and-a-half, do you think they will understand them if you argue for ten days or three months? These are some of the defects of the judicial system in my humble submission. Somehow or the other these defects have to be removed; otherwise some people are suffering I agree with the Mover of the Resolution. Actually the Supreme Court has now been captured by a particular powerful and rich section of the people. The poor people cannot afford to come to the higher judiciary. For example, even in the High Court when I was the Chief Justice of the High Court I visited most of the prisons of the entire North-Eastern region of the five States. I collected the appeals filed from the jail. As you know, the poor convicts cannot afford to engage a lawyer. Therefore, they send an application to the High Court through the Jailer and that is registered as a jail appeal in the High Court. I found in about a hundred cases convicts, were languishing for 3, 10 and 12 years. I directed the registrar to place them for hearing before a bench, paper book or no paper book. Those hundred cases were disposed of in two weeks. About 80 per cent of the convicts had to be acquitted. These people, because they were poor ,because they could not engage any lawyer, had to languish in jail. They have to be released after a period of 3 to 10 years. Look at the fun. Have they been rich they would have engaged lawyers. They would have come before the judge and mentioned Sir, here is a case, there is nothing in this at all. It will take 5 to 10 minutes. Sir, this is what is happening.

Then, with regard to Fundamental Rights and Directive Principles, I will not try to be technical. I will try to be as lay as possible. Fundamental Rights in Chapter III have been held to be enforceable in courts of law. In the Fundamental Rights in Chapter III what are they? Article 19 of the Fundamental Rights speak of right to property, you can free-

ly move in the country, you can settle anywhere in India you like and of equality of opportunity for every man. Here is a jumbo jet, you buy a ticket and you can travel in any part of India. But how many people have money to buy tickets. Can a poor man think of travelling by a jumbo jet in India if he has no money. These Fundamental Rights can be availed only by rich and powerful people but not by the poor people. They can travel anywhere. Can a man who has only one leg travel the whole country? He wants another leg. Can a man travel the whole country by aeroplane if he has no money? He cannot. The Fundamental Rights under Article 30 are utilised by those people who have money and not the poor people. What are the Directive Principles? The Directive Principles are fine. I will only refer to certain parts of Article 39:

"The State shall, in particular, direct its policy towards securing—

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(d) that there is equal pay for equal work for both men and women;".

Is it so today? No. But now you may as lawyer yourself make a sense what will be the poor people doing? They not enfocre the provisions of Part IV. Where as the provisions of Part III which are meant for rich and powerful people can immediately be enforced. The provisions which are made for the poor people cannot be enforced. But if you are a careful lawyer, if you are committed to the Constitution, by some device you can do it. A case came before us when I was in the Supreme Court, before me and two other judges. It was from a police driver. He was a Government officer, a police driver. Other drivers of the Central Government used to get more pay, but the poor driver of the police vehicle got less pay. He came with an application and the Supreme Court directed: "equal pay for equal work". Not that this particular provision of the Constitution is enforceable in a court of law, but you could make out some device to give him redress. That is possible. If it cannot be done, then you make a request to the Government: kindly do this; these poor people are suffering. For example, take the public interest litigation. There is nothing in the Constituion or in any other law like public interest litigation. Up till now, the law and the rules of the High Court and the Supreme Court are to the effect that in order to get some redress, you must approach the High Court or the Supreme Court with an application, you must pay the court fee, etc., etc. Then your application will be registered as a writ petition or a special leave petition, as the case may be. But thanks to the Supreme Court, a new device has been made since the last five or six years, that if a very poor man, and not even that poor man, because he may not know about this practice of the Supreme Court, but even if a friend of that man writes to the Supreme Court saying, "This man is in difficulty; can you kindly given him redress?" the Supreme Court can give and has been giving redress. For example take the case of the blinded prisoners of Bihar or the case of those people who were employed in construction of Asiad etc. You write a postcard and that is registered as an application and a lawyer is engaged from the Lega Aid Committee and the case is heard and redress is given. These things can be done so that the poorer sections of the people also get some benefit from the Supreme Court or the High Court, as the case may be, because these two great institutions, the High Court and the Supreme Court, have been constituted not for big and powerful people but for the poor people also Now, what is happening, for example, under articles 226, 32 and 136 ? If you visit any High Court and take a census of the pending cases, you will find that a vase number of pending cases are under article 226. Anybody and everybody comes under article 226 for enforcement of some legal remedy. People go to the Supreme

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Court under article 32 for anything, even for a legal remedy in the name of a fundamental right. If you put the question as to what is the fundamental right involved, he will say,. "The right to property is a fundamental right." Therefore, if somebody borrowed ten rupees from you by executing a hand-note, instead of going to the Munsiff's court to realise the amount, can he file a writ in the Supreme Court and it can be argue that his fundamental right has been violated. This is possible of you engage a very powerful lawyer. Under article 136, in my opinion, too much power has been given to the Supreme Court—too much—and the Supreme Court is flooded by what is called Special Leave Peition under article 136. The applications made under article 136 are called SLPs, special leave petitions. If you become a Judge of the Supreme Court, then you will have to forget your leisure, you will have to forget your family, you will have to forget your health, you will have to forget your culture and you will have to unlearn what you have learnt under the pressure of special leave petitions. It is not a pleasant job. You have to read the judgment of the High Court and the judgments of the lower courts and then you have to make up your mind either to admit or to reject it. There is nothing creative. This is only mechanical work. But you have to read the papers if you are an honest judge. And all the judges of the Supreme Court are honest peoples. They do read; they read up to midnight. Some of the judges read up to 2-30 A.M. on Sundays, Saturdays also, every day.

And the Chief Justice of India in some meeting had remarked that judges of the Supreme Court were swarmed by applications, by cases. So they have lost their imagination, they have lost their creative activity. Therefore, the Supreme Court also has to be saved from the attack of the Special Leave Petitions. The Supreme Court works for five days in a week. Out of these five days two days, Mondays and Fridays, are exclusively reserved for Special Leave Petitions, for the whole day, nothing else done. Out of the other three days everyday at the beginning for about an hour or an hour and a half 7 to 14 Special Leave Petitions are taken up. On Mondays and Fridays, each day, about 45 to 50 Special Leave Petitions are taken up. You have to read each one of them. This is the condition. They cannot read books for culture. For regular cases on Tuesdays, Wednesdays and Thursdays Judges can work for two to two and a half hours or at best three hours. Even if they devote three hours a day, in a week all-told only nine hours are spent for regular cases. The Supreme Court can give no more than nine hours to regular work in a week. It has been reported that in January 1984 1,37,000 cases were pending in the Supreme Court; 9,76,000 cases were pending before the High Courts; and every Year a lakh of cases were being added. How to solve this problem? The High Courts and the Supreme Court cannot cope with the number of cases. What to do then? The problem cannot be solved unless the legal system itself is simplified--not by increasing the number of judges. You increase the number of judges. Everytime representations come from different States, from different High Courts, for increasing the number of judges. But that is not the remedy. We have our full experience. You go on increasing the number of courts, lawyers, police stations. But are the crimes decreasing? Are the litigations decreasing? No. Now everybody believes, by and large, the High Court and the Supreme Court give correct and honest judgments. Now, as a lawyer or as a citizen have you come across any litigant who having lost his case in the High Court or in the Supreme Court, telling you, Sir, I am happy I have lost my case in the Supreme Court, justice has been done to me? Have you heard? No. Absurd. Nobody is satisfied. I can tell you of one particular case. One district judge murdered his wife and three lovely daughters. There was foolproof, cricumstantial. evidence. He was convicted and sentenced to death by the sessions court. He appealed to the High Court and the High Court upheld the sentence, And then he came to the Supreme Court. Supreme Court dismissed the case. You know the case of Ranga and Billa. Everybody knows of it. There was fool-proof evidence. They were sentenced to death by the Sessions Judge. They came to the High Court. The High Court dismissed it. Then they came to the Supreme Court. The

Supreme Court dismissed it. Then they came with a Review Petition. Why? Because they were not satisfied. knowing fullywell that the Supreme Court gives justice, the High Court gives justice, still they come to the High Court and the Supreme Court. Why? There is no end of it. Maybe, in some psychological recesses of their minds they think that they are not the people who committed the offence. That man thinks that it is the society that has committed an offence as against him. Every human being, after all, is a product of the society. You know what happens in tax laws. There are a large number of appeals in income-tax and tax laws. Then there is reference to the High Court or Supreme Court. All these people involved in tax matters are monied people; so they can go to the High Court or to the Supreme Court. At every stage they can obtain a stay against the operation of the law, as Mr. Bhardwaj was saying. Reference to the High Court, reference to the Supreme Court obtain stay here, obtain stay there. Each time a stay is obtained, it means a period of years. Sometimes cases go on from 20 years and you can successfully stall the realisation of money for years and years by getting a stay. At the long lasts you may lose the case. But how does it matter? You were able to save lakhs and crores of rupees for so many years.

One stay sometimes means Crores. The matter may go from one court to another. It takes 10—15 years. After a long time. it will come up. Then it will be submitted: My Lord, this has become infructuous. You may dismiss it. Then Judge may punish the petitioner. He may say: You have to pay Rs. 15,000 as cash. A person who has in the meanwhile made crores of rupees will not mind paying Rs. 10,000 or Rs. 15,000. This is what is happening.

Now, I came to precedents. One of my honourable colleagues was saying about American precedents, Australian precedents and Privy Council precedents. I ask you: are they applicable to our country? In connection with interpretation of our economic laws or personal laws, how can American precedents help in an Indian court? Our economic system is different; our social system is different. Our heritage is entirely different. In order to correctly appreciate the provisions of the Hindu law. you should read our Vedas, Gita or Upanishads rather than reading American law and English law. Some of the Privy Council, decisions were concerned with personal laws. Without meaning any disrespect to them, some of those cases have been decided rather erroneously because they interpreted the law from their own perspective. They do not know the ethos of a Hindu mind. They do not know the ethos of Muslim mind. They do not know the ethos of Sikh mind. One who has read Guru Granth Saheb, though he is not a Sikh, may know the ethos of a Sikh mind. Similarly a person who has read Vedas, Gita or Upanishads may know something of the Hindu mind. Similarly thosewho have read the Quoran may know what is inside the mind of a Muslim. Therefore, instead of going to foreign decisions and getting confused in the matter, it is better in my respectful opinion to read our scriptures and books of heritage and decide the cases correctly.

Then I come to judgements and concurrent judgements. It is painful to criticise the Supreme Court. Supreme Court is the highest judiciary in the land and we pay respects to it even today. Although I was a Judge of that court, I still feel very honestly and sincerely that sometimes very long judgements are written. I wonder whether anybody has been able to read all these judgements from the beginning to the end. Judgements run into 500 pages and 600 pages. Life is very busy. I have not read them in their entirety.

SHRI S. W. DHABE (Maharashtra): And every Judge gives a separate judgement.

SHRI BAHARUL ISLAM: I will come to that also. Then you deal with so many extraneous matters and then write the judgement. All that you have to do is to narrate facts, bring out the issues and give your judgement. But you quote 10 or 15 earlier decisions. What for?

If it is concurrent judgement, what is the use of separate judgements unless it is to show off your knowledge?

SHRI SANKAR PRASAD MITRA: Why did you not tell your colleages?

SHRI BAHARUL ISLAM: I was telling them. Possibly they did not react favourably. Maybe they wanted to play to the gallery; maybe they were playing to the press — I do not know. If you want to worship goddess Saraswati, why do you go out and do it? Do it in your room solmnly. If you want to meditate, why do you go to the street? Do it in your room.

AN HON'BLE MEMBER: Did Justice Mitra tell his colleagues?

4 P.M.

SHRI BAHARUL ISLAM: I cannot address brother Mitra. Madam, you would have read many decisions of the High Courts and the Supreme Court. Certainly, brother Justice Mitra also has read. Now, how many original judgments has he come across? Each judgment contains references to ten or fifteen or twenty or a hundred earlier decisions; few original ideas. It will be audacity on my part to say, and I will not be correct in saying, that all the judgments are like what; but most. But there are original judgments and they give the line and that is necessary. But most judgments contain earlier decisions, repetition, repetition, repetition. Now, what is the provision of law as to the appeal against acquittal? More than a hundred decisions perhaps have been written on it. One decision interprets the earlier decision and the third interprets the other two and the fourth tries to distinguish one from the other. All confusion.

SHRI SANKAR PRASAD MITRA: How many judgments have you come across in which the first paragraph contradicts the last paragraph?

SHRI S. W. DHABE: That is the beauty of judgments.

SHRI BAHARUL ISLAM: Now, Madam, with regard to amendments.

There is huge number of cases under articls 32 of the Constitution which are numbered as writ peitions; there is a huge number of Sepecial Leave Peittions under article 136; and there is a huge number of writ peitions under article 226 before the High Courts. Madam, the Gajendragadkar Commission issued a questionnaire and one of the questions was for eliciting opinion with regard to the proposed amendment of these articles. Madam, do you know what the reaction was? A majority of the respondents were in favour of the *status quo*; the Supreme Court Judges were in favour of the *status quo;* and ultimately, the Law Commision had to accept the *status quo*. So, when it is for *status quo*, certainly, somebody has some vested interest and nobody wants to limit the powers of the Supreme Court and the High Court. The net result is that the poor people who cannot outwit the Supreme Court and the High Court, who cannot engage the best lawyers, are suffering and are groaning today and, unless we save these people, we will only be paying disrespect to the Preamble of the Constitution. It is our duty to see to the conditions of the poor, the under privileged, and unless these people are brought up, the country will never be at peace. For example, we are saying today that foreign forces are trying to destabilise the frontier areas. The reason is—except in the case of Punjab because Punjab which is prosperous and its case is quite different, but in areas like the North-Eastern region, the people there are poor, so the areas are vulnerable and there are forces and vested interests which are trying to exploit them, exploit these less privileged people in these vulnerable areas. So, unless we improve their conditions, we will only be doing an injustice to our country and to our people and, therefore, the immediate constitution of a Judicial Reforms Commission, as envisaged in the Resolution, is of the utmost importance.

I, therefore, support this Resolution. Thank you.

THE VICE-CHAIRMAN [DR. (SHRIMATI) SAROJINI MAHISHI] Mr. Ashwani Kumar Not here. Yes, Mr. Aiyubbaig.

श्री मिर्जा इश्शादबेग ऐंयुबबेग (गुजरात) : उपसभाध्यक्ष महोदया, सदन में आपके इस जगह को संभालते हुए मुझे बोलने का अवसर देने के लिए मैं अपनी तरफ से आपको धन्यवाद करता हूं । इस सदन में पुनः निर्वाचित होने के पश्चात् यह मेरा पहला अवसर है ।

प्रस्ताव के समर्थन में मैं यह कहना चाहूंगा कि वर्तमान न्यायिक प्रणाली से यदि किसी की परिस्थिति अधिक दयनीय हुई है, तो मैं यह कहूंगा कि वकील की परिस्थिति अधिक दयनीय बनी है । मुझे याद आ गया अकबर इलाहाबादी का वह शेर वर्षों मरहूम ने यह फर्माया था कि :

"जब पैदा हुआ वकील तो इबलिस
ने भी कहा
कि लो आज मैं भी अहले इंसान
हो गया ।"

खैर, जनता के विशाल हित में वर्तमान कानून का सुधार होना मैं समझता हूं कि समय की एक अनिवार्य आवश्यकता है । गरीबी और बेरोजगारी के उन्मूलन की दिशा में आज जो विभिन्न योजनायें सरकारों द्वारा प्रस्तुत कर दी गई हैं उसके अमलीकरण की यहां जोरों के साथ बातें की जा रही हैं । मजदूर की साँझेदारी पर जो संघर्ष आज देश में चल रहा है और उच्चतम उत्पादकता के दर की प्राप्ति में जो बाधायें आज हमको सहन करनी पड़ती जा रही हैं, इतना ही नहीं लेकिन आज देश में बाल मजदूर की जो समस्यायें हैं, बंधुआ मजदूर की जो समस्यायें हैं, उन समस्याओं के उन्मूलन के लिए अगर हमें किसी का आधार लेना है तो आज भी देश में जो 80-90 साल पुरानी हमारी जो पद्धति है जो न्याय प्रणाली है और मैं यह कहूंगा कि ब्रिटिश हुकूमत ने जाते-जाते हमारे खपड़ में जो चीज डाल करके गये हैं आज इतने सालों के पश्चात जब देश में विशाल परिवर्तन हुआ है देश की सामाजिक परिस्थिति में, देश की आर्थिक परिस्थिति में, मैं यह कहूंगा कि विश्व की तुलना में भी इतने गम्भीर किस्म के कह सकते हैं परिवर्तन हुए हैं जब कि हमारी आज की वर्तमान प्रणाली आज भी वह पुराने नियमों पर आधारित है । मैं यह कहना चाहूंगा कि इससे हम अच्छे परिणाम कभी भी प्राप्त नहीं कर सकते हैं । एक मैं यह भी कहना चाहूंगा कि यह एक समय की मांग है कि कानून बनाने वाली संस्थायें और न्यायिक संस्थायें जो हैं उन के बीच में एक वाक्यात तथा संकलन रहे, जिनका भारी मात्रा में आज अभाव हमको देखने को मिलता है । आज मैं यह कहना चाहूंगा हमारी प्रधान मंत्री ने भी इस बात को दोहराया है और हमेशा कहा है कि लोकशाही के मूल्य तब तक पनप नहीं सकते जब कि जुडीशियरी एग्जीक्यूटिव और लैजिस्लेचर में एक संवादिता न हो, आज कानून बने हैं पार्लियामेंट ने कोई कानून बनाया है, स्टेट की असेम्बली ने कोई कानून बनाया है, लेकिन मैं पूछने जा रहा हूं मंत्री जी यहां बैठे हैं, वह मुझे बतायेंगे कि लैजीस्लेशन द्वारा जितने भी कानून पारित किए गए हैं मैं आपको इतने सारे उदाहरण दे सकता हूं कि आज तस्करी नामूती के लिए अगर कोई कानून बना आज कर चोरी को दबाने के लिए कोई कानून है, आज जमाखोरी नामूस के लिए अगर कोई कानून बना है तो मुझे आज बताने का प्रयत्न करें कि आज हमारे वह न्याय की कोर्टों में कितने-कितने पैंडिंग हैं और कितनी चीजों को दबाकर रखा है और मैं यह कहूंगा कि समाज का, देश का प्रतिबिंब करते हैं समाज के प्रतिनिधि हो करके कोई विधान सभा में बैठते हैं, कोई पार्लियामेंट में जा करके कहते हैं, मैं यह कहूंगा कि देश के समाज को ये प्रतिबिंबित करते हैं, ये इनकी आशाओं और आकांक्षाओं को अपने शब्दों द्वारा इस देश की विधि द्वारा इस देश के विकास के लिए अगर कोई कानून बनाया जाता है तो मैं समझता हूं कि देश के निचले स्तर के लोगों को ध्यान में रखते हुए, देश के कोने को ध्यान में रखते हुए यह एक

[श्री मीर्जा इरशादबेग ऐयूबबेग]

विधि का प्रस्थापन करने के लिए उन्होंने अपने दिमाग से उन्होंने अपनी समझदारी से सोचा है तब क्या अधिकार आता है कि ऐसी चीजों को सिर्फ मैं यह कहूंगा कि हमारे सीनियर साथी बहरुल इस्लाम साहब ने अभी कहा क्योंकि कान्स्टीच्यूशन में इन बातों को बताया गया है तो मैं यह कहूंगा कि कान्स्टीच्यूशन कोई जड़ नहीं है। मनुस्मृति में मनु ने खुद भी कहा कि जहां तक कानून रक्षित हैं वहां तक हम रक्षित है, जहां कानून का हमने अंत किया है वहां हमारा भी अंत होने जा रहा है, यह मनुस्मृति में मनु ने कहा है। जब इस धार्मिक भावनाओं के आधार पर हमारी संस्कृति के आधार पर यह देश की आधारशालाये बैठी हैं हमारी संस्कृति की आधारशालायें हैं तो क्यों न जो उसके बीच में रहा अर्क है, उस अर्क को हम ले करके आज हमारी जो प्रणाली है इस प्रणाली में इसके चित्त को चित्रित करें, इसको अंकित करें और सही मात्रा में जो हमारा समाज है जो हमारा समाज सोच रहा है उसका प्रतिभाव हमारे विधानों में होना चाहिए। जस्टिस हिदायतुल्लाह ने ज्यूरिसप्रयूडेंस के बारे में भी कहा कि यह तो वर्षों बीत चुकी वह प्रणाली है और उसमें सुधार होना आवश्यक है। जब हमारे कानूनविध जो समाज के बीच में बैठे हैं समाज को जान करके बैठे हैं वे अपने दिमाग के साथ अगर अपनी बातों को सभा के सामने प्रस्तुत करते हैं तो हमारे बीच में कौन सी रुकावटें आती हैं तो हम यह कानून को हमारे देश की विकास की मात्रा में आगे ले जाएं और समाज को विकास की मात्रा में आगे बढ़ाया जाए और व्यक्ति का विकास तभी हो सकेगा जबकि समाज हमेशा परिवर्तनशील और गतिशील विचारधाराओं को हमेशा मूर्तिमान करता रहे। मैं पूछना चाहता हूं कि इतने वर्षों के पश्चात भी क्यों हम आज जागे नहीं हैं? जो हमारे कानून हैं वह वर्षों से जब से हमारी आजादी आई, बल्कि कितने ही कानून जब मैं पैदा हुआ था तब के कानून आज चल रहे हैं। बताइये वह अपना जड़त्व समय के साथ और समाज के साथ कैसे बिठा सकेंगे। क्रिमिनल जूरिस्प्रूडेंस में जो व्याख्याएं बताई गई हैं उन में यह कहा गया है--

The offence should be proved beyond all reasonable doubts.

अब बताइये हमेशा होता क्या आया है। उपाध्यक्ष जी, आप समझती हीं हैं और कहीं ज्यादा केसेज को आपने देखा है, चलाया है और निर्णय भी किए है। अपराधी को हमने अपनी आंखों से देखा है, हम ने देखा है कि सामने वार कर रहा है, उसने अपनी जेब से छुरी निकाली है, छुरी सामने वाले के दिल में भोंकी है, खून निकला है, उस की मृत्यु हुई है। लेकिन फिर वही बात आजाती है, हमारा चक्कर चलता है, पंचनामा आफ रिकवरी एंड डिस्कवरी। वहीं मामले का अन्त हो जाता है। एवीडेंस एक्ट के हिसाब से सत्यता को साबित करिए। तो मैं यह कहना चाहता हूं कि इसमें आमूल परिवर्तन की जरूरत है। आज यह इनवेस्टीगेशन की जो प्रणाली है, मैं पूछना चाहता हूं, वह कितनी पुरानी है। जब कानून में आफेंस अगर हुआ है, पुलिस के सामने आते हैं तो रिकार्ड करने वाले अगर सिम्पिल हर्ट है, ग्रीवियस हर्ट है तो कांस्टेबिल वगैरह बयान ले लेंगे, अगर खून करके कोई गया है तो हो सकता है डी० एस० पी० बयान लेंगे। लेकिन मैं यह पूछना चाहता हूं कि बयान ले वाले कोर्ट के सामने यह कहते हैं कि इसने यह आफेंस किया है और यह कानून के तहत आफेंस है तो उन के

पास कानून का ज्ञान कितनी मात्रा में है? बार कौंसिल में बैठते हैं तो मजाक की बातें भी होती हैं। कहीं-कहीं यह बात भी चलाई गई, गांधी जी की मृत्यु हुई, उस पर एक कांस्टेबिल अपनी रिपोर्ट दर्ज करता है तो कैसे करता है। मैं पूछना चाहता हूं कि क्या इस प्रणाली में सुधार करना चाहते हैं या नहीं। कानून के साथ जो जुड़े हुए लोग हैं उनको कानून समझाने की कोई प्रणाली होनी चाहिए या नहीं? मैं मांग करता हूं कि जो हमारे अधिकारी हैं उनके पास कानून का संपूर्ण ज्ञान होना चाहिए। आज यही कानून पद्धति है जिस की वजह से आज हमारी पुलिस सम्माननीय नहीं है। आज सामान्य जन पुलिस को घृणा की दृष्टि से देख रहा है इसलिए कि समाज में व्यवस्था ही नहीं है और अगर पुलिस अपना वजन बना कर गई है तो कोर्ट ने भी उसको भी इसी तरह देखा है जैसे तोहमतदार हो। तो मैं कहूंगा कि यह जो संवादिता नहीं है उस को स्थापित करने के लिए समाज को ध्यान में रखते हुए वर्तमान प्रणाली पर सोच-विचार करना चाहिए।

मैं यह भी कहना चाहता हूं कि सरकार अगर कोई कानून बनाती है तो सरकार में बैठने वाले लोग जनता में और समाज से आये होते हैं, उनको सब से ज्यादा मालूम है कि समाज को किस दिशा में गतिशील करना है, समाज में कहां-कहां त्रुटियां हैं। और समाज को प्रतिनिधित्व करने वाले यह लोग हैं। जब उन्होंने एक कानून बनाया तो उस को चैलेंज कर के कोई अगर कोर्ट में गया तो उस के साथ कैसा व्यवहार होता है। मानों वह दुश्मन हो। ऐसा व्यवहार वहां मिलता है चाहे वह बैंकों के नेशनलाइजेशन की बात हो या किसी छोटे कानून की बात हो। मैं कहना चाहूंगा कि यदि कांस्टीट्यूशन में परिवर्तन की आवश्यकता है तो हमारा कांस्टीट्यूशन तो परिवर्तनशील है। उस में सुधार ला कर भी इन चीजों को हमें पूरा करना चाहिए। जैसा कि हमारे एक साथी ने कहा, आज कोई भी एक मामूली सा इंसान, एक छोटे क्लर्क से लगा कर बड़े अधिकारी तक जैसे कि बहारूल इस्लाम साहब ने आंकड़े दिये एक मामूली से ट्रांसफर को ले कर भी 15-20 साल के बाद भी उस मामले में कोर्ट स्टे दे देता है। मैं पूछना चाहता हूं कि यह क्या न्यायिक पद्धति में बैठने वाले लोग क्या केवल कानून की किताबों को देख कर ही कानून चलायेंगे या जो समाज की आज की हालत है उस को देख कर भी कानून को चलाने का प्रयास करेंगे? मैं पूछना चाहता हूं कि यह संसद या विधान सभायें जो हैं उन्होंने जितने कानून बनाये हैं उन में से कितने कारगर हुए हैं और कितनों को दबाया गया है। कितनों को कोर्ट्स की जड़ता के कारण दबाया गया है। मैं जानना चाहता हूं कि अगर कांस्टीट्यूशन में ऐसी कोई बाधाएं हैं तो उन के लिये हम क्या करना चाहते हैं। मैं एक उदाहरण देना चाहता हूं खाद्य तेलों के बारे में। गुजरात प्रदेश उन का अधिक उत्पादन करता है और वहां काफी बड़ी लाबी है जिस ने इन तेलों को अपने यहां जमा कर के रखा क्योंकि उन के पास पैसा है, उन के पास संपत्ति है और वह किसी को भी के दबा सकते है। उस के लिये गुजरात की विधान सभा ने एक कानून बनाया कि ऐसे तेल जमा करने वालों को ले जा कर बंद कर दिया जाये या उन के खिलाफ इंवेस्टिगेशन किया जाये। इस के लिये एक कानून पारित किया गया। लेकिन पैसे के दबाव से उस कानून को फौरन चैलेंज कर दिया गया और वह ठप्प हो गया जिस के कारण सरकार अब

[श्री मीर्जा इर्शाद बेग ऐयूबबेग]

कोई कार्यवाही नहीं कर सकती। अपनी जान पर खेल कर उन अधिकारियों ने इन गद्दारों को, स्मगलिंग करने वालों को वहां पकड़ा है, लेकिन उस के बाद हम ने कितने ही अधिकारियों के साथ बात की और उन्होंने कहा कि क्यों आप हमारी जान के दुश्मन बनते हैं। अगर मामला कोर्ट में जाता है तो ऐसे लोग फौरन छोड़ दिये जाते हैं। यह ठीक है कि यह हमारा कानून इस सिद्धांत पर बना है कि भले ही कितने ही गुनाहगार छूट जायें लेकिन किसी एक बेगुनाह को सजा नहीं मिलनी चाहिए। लेकिन आप को आज के समाज की स्थिति को भी देखना चाहिए, समाज की गति को हम को देखना चाहिए। क्या इस के विकास की गति को हम कम करना चाहते हैं या इस को तेज करना चाहते हैं इस बात पर हम को सोचना चाहिए। इस लिये मैं कहना चाहता हूं कि इस क्षेत्र में आमूल परिवर्तन की आवश्यकता है। आज अदालतों की बात करते हैं तो देखिए कि उन में आज कितने केसेज पेंडिंग हैं। किसी मामले में भी जा कर स्टे ले लिया जाता है और उस में अधिकारीगण फिर कुछ नहीं कर सकते। तो क्या ऐसी छोटी छोटी बातों को ले कर देश के विकास को हम को रोकना चाहिए। ऐसा होने पर कितनी सदियों के बाद हम दूसरे देशों के साथ अपने कदम मिला कर चल सकेंगे यदि इसी गति से विकास होता रहा तो। आज एक लाख केसेज सुप्रीम कोर्ट में और 9 लाख केसेज हाई कोर्ट्स में पेंडिंग हैं। आज किस दिशा में हमारा न्याय तंत्र जा रहा है। हम तो चाहते थे कि गरीब के घर तक न्याय को सुलभ होना चाहिए/ यहीं हमारा आदर्श था। मैं पूछना चाहता हूं कि क्या कोई अपने गरीब फंडामेंटल राइट्स के लिये हाई कोर्ट तक आज जा सकता है, पहुंच सकता है ? अगर पहुंच सकता है तो कितने ऐसे हैं कि जो हाई कोर्ट तक पहुंच सकते हैं। सुप्रीम कोर्ट और हाई कोर्ट में आने के लिये उनके के पास वकीलों को देने के लिये पैसा कितना है। हम ने गुजरात में लोक अदालतें चलाने का प्रयास किया। उन का मैं दृष्टांत देना चाहता हूं। मेंटेनेंस की बात है या दूसरे जो छोटे प्राबलम्स थे उन को छोटी छोटी लोक अदालतों ने गांवों में जा कर निपटाया। वह इसलिए कि हमने देखा कि हमारे समाज की मांग क्या है। छोटी अदालतें गांवों में स्थापित कीं। मंत्री जी के पास आंकड़े मौजूद होंगे वे बतायें कि कितने साल से पैंडिंग केसेज का निपटारा किया गया है।

मान्यवर, मैं यह भी कहना चाहूंगा कि बम्बई, गैम्बलिंग ऐक्ट का सैक्शन 4 और 5 बड़ा मजेदार है। हमने अपनी आंखों से देखा है कि वह सामने ताश खेल रहे हैं, पैसे उनके सामने पड़े हैं। लेकिन फिर भी अगर वे किसी प्राइवेट हाउस में बैठे हैं तो जिसके नाम हाउस है उसका वारंट बिना लिए पुलिस वहां नहीं जा सकती है। जिसके नाम का वारंट है उसको लेकर वह जाने पर यह पता लगे कि घर उसके नाम पर नहीं है तो इस बिना पर वह छुटकारा पा जाता है। सुप्रीम कोर्ट ने रमी के बारे में एक बड़ा ही दिलचस्प निर्णय दिया। उन्होंने जजमेंट में कहा कि-

रमी इज नाट ए गेम आफ चांस, इट इज ए गेम आफ स्किल।

श्री पी० एन० सुकुल (उत्तर प्रदेश) जज भी खेलते है।

श्री मीर्जा इर्शादबेगऐयूबबेग : महोदय, जिस साल में मैं पैदा हुआ था 1949 में बम्बई, प्राहिबिशन एक्ट बना। इतने साल

हुए, मैं पूछना चाहता हूं कि हजारों कैसे हुए, उनमें से शायद सौ लोगों को भी उसके तहत नहीं पकड़ा गया। क्यों ? क्योंकि वकील साहब पहले ही पूछ लेते हैं। अगर एक ही बात कह दी कि तुम कैसे जानते हो कि उसने दारू पी थी। कहा जाएगा कि साहब उसके मुंह से बदबू आ रही थी। क्या तुमने कभी दारू पी है तो बोले कि जी नहीं। तो कहा जाएगा कि तुम कैसे कह सकते हो कि उसने दारू पी है जब तुम दारू नहीं पीते ? इसी बिना पर उसको छुटकारा मिल जाता है। तो मैं पूछना चाहता हूं कि ऐसे कानून जिनसे हम लोगों को अपराधियों को सजा नहीं दिलवा सकते, ऐसे कानून को हम बदलना चाहते हैं या नहीं ?

महोदय, मैं यह भी कहना चाहूंगा कि आज देश को प्रगतिशील बनाने के लिए हमने जो लैंड सीलिंग के ऐक्ट, अरबन लैंड सीलिंग के ऐक्ट बनाए हैं, क्या उन एक्टों को इंपोज करके हम जमीन ले सके हैं? राज्य सरकारों ने इन सीलिंग ऐक्टस को लागू करके कितनी जमीन ली है और कितने लोगों को वह दी है ? मैं पूछना चाहता हूं अगर देश को यह प्रणाली कुछ नहीं दे सकती है तो उसको परिवर्तित करने की आवश्यकता है। मैं कहूंगा कि आज की नौजवान पीढ़ी की यह मांग है कि अगर इस देश में हमने रहना है, अगर हमारे देश का विकास करना है तो हमको चाहिए कि समाज में समाजिक न्याय मिल सके और वह न्याय सहज रीति से मिल सके। ऐसी प्रणाली अगर नहीं है तो कितने ही आप कानून बना दीजिए, सदन में कितना ही समय बरबाद कीजिए, प्रधान मंत्री चाहे कितने ही 20 सूत्री कार्यक्रम दे दें लेकिन जब तक कानून की प्रणाली में मूल परिवर्तन नहीं करेंगे, जब तक ठोस कदम नहीं उठाए जाएंगे तब तक मैं समझता हूं कि कोई अच्छे परिणाम नहीं निकलेंगे।

उपसभाध्यक्ष महोदय, मैं इस प्रस्ताव का समर्थन करते हुए आखीर में यही कहूंगा कि भारद्वाज जी ने जिस बात को सदन के सामने रखा है, मैं हार्दिक तौर पर उसका समर्थन करते हुए यह कहूंगा कि जितनी जल्दी हो सकें, जितना हो सकें सरकार को चाहिए कि इस दिशा में कदम उठायें। कितने ही ला रिफार्म्स हमारे सामने आए, उन पर कई बहसें हुई। समाज का हर इंसान प्रधान मंत्री से लेकर सब ने इस बात को दोहराया है कि हमारे यहां ला रिफार्म्स होने चाहिए लेकिन मैं कहना चाहता हूं कि यह समय की मांग है, समय का तकाजा है, अतः समाज की मांग को स्वीकार करते हुए भारद्वाज जी ने जो प्रस्ताव रखा है सरकार को उस पर विचार करना चाहिए और कुछ ठोस परिणाम उसके बाद। इस आभार के साथ मैं इस प्रस्ताव का स्वागत करता हूं।

उपसभाध्यक्ष [डा० (श्रीमती) सरोजिनी महिषी] : श्री हुकम देव नारायण यादव जी। मैं माननीय सदस्य से प्रार्थना करती हूं कि 10 मिनट से अधिक न लें।

SHRI S. W. DHABE: Madam Vice-Chairman, I am on a point of order in regard to the procedure. In the case of the discussion on Private Members' Resolutions, it is the practice that individual Members give their names, not party-wise and they will be called in the serial order in which they are given. But I find, this has been converted like any other discussion where time is allocated between various groups and parties. This is not the practice followed in the case of discussion on the Private Members' Resolution I would request the Secretariat, through you, that this should be examined and individual Members should be called in the order in which they have given their names.

SHRI P. N. SUKUL: That is not so under the rules

SHRI S. W. DHABE: That is so.

उपसभाध्यक्ष [डा० (श्रीमती) सरोजिनी महिषी] : आपसे प्रार्थना है कि 10 मिनट में अधिक न लें।

श्री हुक्मदेव नारायण यादव (बिहार) : अगर आप कहेंगी तो मैं उससे भी कम बोलूंगा। मैं इसलिये बोलता हूं क्योंकि लोग डेढ़-डेढ़ घंटे बोलते चले जाते हैं। पहले ही से रोक लगनी चाहिये इससे अधिक लोग पार्टीसिपेट कर सकते हैं। प्रतिबन्ध शुरू से ही लगना चाहिये।

अभी यह जो प्रस्ताव सदन के सामने पेश है मैं इसके लिये प्रस्तावक महोदय को धन्यवाद देता हूं और धन्यवाद इसलिये देता हूं कि सत्ताधारी दल में रहते हुए कुछ लोगों के मन में सामाजिक और आर्थिक परिवर्तन के लिये कुछ लालसा और उमंग है। लेकिन मैं उनसे यह भी प्रार्थना करना चाहूंगा कि लालसा और उमंग रहते हुए क्या करेंगे। यह तो वही हुआ कि अंधे के आगे रोये, अपने दीदे खोये। जैसा आपने प्रस्ताव रखा उस पर उच्चतम न्यायालय के भूतपूर्व न्यायाधीश अपने विचार को रख रहे थे और अन्य लोगों ने भी अपने विचार रखे। मैं भी अपने विचार रख रहा हूं और अपने कर्त्तव्य का निर्वाह कर रहा हूं। महोदया, मैं यह कहना चाहता हूं कि अगर न्यायेत्तर व्यवस्था को बदलना चाहते हैं तो तब तक समाज का वर्ग चरित्र नहीं बदलेगा तब तक आप न्यायिक व्यवस्था कैसे बदलेंगे। हम जन्म से कहां हैं, पलते कहां हैं, पनपते कहां हैं, शिक्षा कहां होती है। हजारों, लाखों, करोड़ों वर्ष की जातियता, धर्म और संस्कृति जो चली आ रही है क्या यह सब प्रेरित नहीं करते। मैं जजों की नियुक्ति के सिलसिले में कुछ कहना चाहता हूं। उत्तर प्रदेश में हाई कोर्ट में 13 जज बहाल हुए हैं। उसमें एक मुसलमान, तीन ठाकुर और 9 ब्राह्मण। मैं किसी जाति पर आरोप नहीं लगाता। मैं जज को बहाली की चुनौती देना चाहता हूं।

संसदीय कार्य विभाग में राज्य मंत्री (श्री कल्पनाथ राय) : एक व्यवस्था का प्रश्न है। मैं जात-पांत की बात नहीं करना चाहता लेकिन जनता पार्टी के जमाने में 16 जज बनाये गये इलाहाबाद हाई कोर्ट में, जिस समय शांति भूषण यहां पर ला मिनिस्टर थे उसमें से 14 जज बनिये बनाये गये थे।

श्री हुक्मदेव नारायण यादव : क्या यह व्यवस्था का प्रश्न है?

उपसभाध्यक्ष [डा० (श्रीमती) सरोजिनी महिषी] : यह व्यवस्था का प्रश्न नहीं है। कंटरवर्शियल मैटर रेज नहीं करने चाहियें।

श्री हुक्म देव नारायण यादव : मैं आपसे यह निवेदन कर रहा था कि मनुष्य धर्म, चरित्र, जाति, धर्म और संस्कार से प्रेरित रहते हैं। हाई कोर्ट के जज बहाल होते हैं। मैं जिस समय जनता पार्टी का लोक सभा का सदस्य था उस समय से लेकर आज तक निरन्तर इस बात के लिये लड़ता आया हूं और लड़ता रहूंगा कि हाई कोर्ट का जज बहाल करते हैं वहां का मुख्य मंत्री एक, चीफ जस्टिस और राज्यपाल बैठकर तय करते हैं। पटना हाई कोर्ट का चीफ जस्टिस, वहां का मुख्य मंत्री और गवर्नर ये तीनों मिल कर बैठ कर, जजों की खाली जगहों को भरेंगे। तीन पत्ती खेलेंगे। तीनों मैरिट को डिसाइड करेंगे। आई ए एस आफिसर्स हिन्दुस्तान को चलाते हैं, देश को चलाते हैं तो जजों की बहाली के लिये भी क्यों नहीं आलइंडिया सांधसेज बना दी जाती है। मेरी यह

आर्थना है कि जैसे आफिसर्स की नियुक्ति के लिये आल इंडिया सर्विस कमीशन बना हुआ है उसी तरह से जजों की बहाली के लिये भी आल इंडिया जुडिशियल सर्विस कमीशन बनना चाहिये । मैं जानता हूं कि जिस दिन मैरिट के आधार पर इनकी नियुक्ति होगी उस दिन गरीबों का बेटा भी उस टेस्ट में निकल कर आयेगा, वह प्रतिभाशाली होगा । वह तैयारी करके वहां पहुंच सकता है। लेकिन जब तक यह तीन पत्ती ताश खेला जाता रहेगा, जाति के नाम पर बहाली होती रहेगी, रिश्तेदारों के नाम पर बहाली होती रहेगी तो गरीबों का कुछ नहीं होने वाला है। मैंने उच्चतम न्यायालय के चीफ जस्टिस को एक आरोप पत्र भेजा था कि पटना हाई कोर्ट की नियुक्ति की जांच कराई जाए लेकिन वह क्या जांच करेंगे । हमारा आरोप है कि चीफ जस्टिस अपने साथी के रिश्तेदार को, या उसके बेटे को बहाल करते है ? और वह जज चीफ जस्टिस की कुर्सी पर जाता है तो उसके बेटे को बहाल करता है। जांच होगी कैसे ? समाज के अंदर सामाजिक और आर्थिक परिवर्तन की बात वहीं होती है जहां जन्म और जाति के कठघरे में इंसान की प्रतिभा कैद है। और जब तक वर्ग चरित्र नही बदलेंगे तब तक देश में सामाजिक परिवर्तन नही आ सकता है। आज आवश्यकता इस बात की है कि समाज में परिवर्तन लाया जाय। हमारे देश में न्यायिक व्यवस्था तब तक नहीं बदल सकता है जब तक हमारा वर्ग चरित्र नहीं बदलता है। इसलिए आज आवश्यकता इस बात की है कि वर्ग चरित्र को बदलने के लिए हमको क्रांति लानी पड़ेगी। आज भी आप हिन्दुस्तान के किसी भी हिस्से में चले जाइये, बिहार में चले जाइये, आप को पता चलेगा कि वहां पर जो हरिजन और पिछड़े वर्ग के लोग हैं उनको अंग्रेजों के जमाने से ही क्रिमिनल्स घोषित कर दिया गया है। बिहार में दुसाध जाति को क्रिमिनल्स की जाति माना जाता है। हरियाणा में सांसी जाति को क्रिमिनल्स समझा जाता है । और इस तरह से उत्तर प्रदेश में पासी जाति को क्रिमिनल्स में माना जाता है । अगर कोई पासवान, चमार, हरिजन या पिछड़े वर्ग का है तो उसको क्रिमिनल माना जाता है । जजों का मानस यह मानकर चलता है कि चूंकि इनके बाप-दादा जन्म-जन्मान्तर से बदमाश थे, इसलिए ये लोग भी बदमाश हैं । हिन्दुस्तान की 80 प्रतिशत जनता जिस वर्ग से संबंधित है, हिन्दुस्तान की जो हरिजन और पिछड़ी जातियां हैं उनको जज नहीं बनाया जाता है। मैं यहां पर एक उदाहरण देना चाहता हूं। बिहार में श्री बिन्देश्वरी प्रसाद मंडल मुख्य मंत्री बने तो उन्होंने सबसे पहले पिछड़ा जाति के आदमी को जज बनाया। पटना हाई कोर्ट में पहली बार एक पिछड़ी जाति का आदमी जज बनाया गया । बिहार में 11 प्रतिशत अहीरों की आबादी है। सौभाग्य से जब श्री कर्पूरी ठाकुर चीफ मिनिस्टर बने तो उन्होंने पिछड़ा जाति के आदमी को पटना हाई कोर्ट का जज बनाया । जब श्री कर्पूरी ठाकुर बिहार में मुख्य मंत्री बने, चौधरी चरण सिंह होम मिनिस्टर बने और श्री शांति भूषण जी ला मिनिस्टर बने तो श्री आर० पी० मंडल को पटना हाई कोर्ट का जज बनाया गया। मैं पूछना चाहता हूं कि क्या उससे पहले हम लोग पढ़े-लिखे नहीं थे ? क्या हम हाई कोर्ट का अनुभव नहीं थे ? नहीं, यह बात नहीं थी। पहले हम लोगों का मेरिट को देखने वाला कोई नहीं था। जब श्री बिन्देश्वरी प्रसाद मंडल चीफ मिनिस्टर बने तो उन्होंने पहली बार पटना हाई कोर्ट में पिछड़ा जाति के आदमी को जज बनाया। जब श्री कर्पूरी ठाकुर बिहार के मुख्य मंत्री बने तो उन्होंने

[श्री हुक्मदेव नारायण यादव]

श्री आर० पी० मंडल को पटना हाई कोर्ट का जज बनाया। इसलिये मैं आपसे यह निवेदन करना चाहता हूं कि आप हमारी न्यायिक व्यवस्था की जांच कीजिये। क्या चमार, कुम्हार धोबी, हरिजन और पिछड़ी जातियां सब की सब खराब जातियां हैं? मुझे ऐसा लगता है कि आज के प्रशासन की नियत खराब है। हमारे देश की 80 प्रतिशत जनता को न्यायिक व्यवस्था में कोई स्थान प्राप्त नहीं है। इसलिये मेरा निवेदन यह है कि हमारे समाज में वर्ग चरित्र को बदलने की बहुत जरूरत है।

श्री नरेन्द्र सिंह (उत्तर प्रदेश): पटना हाई कोर्ट में तो एक आदमी पिछड़ी जाति का है।

श्री हुक्मदेव नारायण यादव: अब जो 13 की बहाली हुई है उनमें एक आदमी ऐसा है। इसलिए मेरा कहना यह है कि समाज के वर्ग चरित्र को बदला जाय। आज सबसे बड़ा अपराध गरीबी है। हम लोगों को दो बार नहीं अनेक वर्षों तक जेलों में रहने का अनुभव प्राप्त है। श्री कल्पनाथ राय और हम एक साथ जेलों में रहे हैं। जब वे हमारे साथ समाजवादी थे तो हमारे ही अखाड़े में थे, हम लोग एक ही अखाड़े के आदमी हैं, समाजवादी अखाड़े के लोग हैं। पता नहीं कौन-कौन धारा में, 107, 109, 151 में या अन्य किसी धारा में हम लोग बन्द होते रहे हैं। हमने देखा कि जब जेल वालों को कोई पाखाना साफ करने वाला नहीं मिला, कोई सफाई करने वाला नहीं मिला तो फौरन से एस० पी० और कलक्टर को कहा जाता है कि किसी चमार, हरिजन को 109 या 107 में गिरफ्तार कर दो और तब किसी भी चमार, हरिजन को क्रिमिनल कहकर गिरफ्तार कर लिया जाता है और जेल में बंद कर दिया जाता है और उससे यह काम करवाया जाता है। इसलिए मैंने कहा कि आज आवश्यकता इस बात की है कि समाज के अन्दर सामाजिक परिवर्तन के लिए लड़ाई लड़ी जानी चाहिए। मैं विधि मंत्री जी से यह विनम्र निवेदन करना चाहूंगा कि आप एक जुडिशियल आयोग बनाइये जो यह देखे कि किस प्रकार से न्यायिक व्यवस्था में इन वर्गों के साथ अन्याय हो रहा है। भोजपुर, रोहतास, नालन्दा, गया, बेगूसराय आदि कहीं भी चले जाइये, आप देखेंगे कि जो हरिजन हैं, पिछड़ी जाति के हैं, उनको नक्सलाइट कहकर पकड़ लिया जाता है। उनको कहा जाता है कि तुम क्रिमिनल्स हो, चोर हो, बदमाश होक एन्टी सोशल एलीमेंट हो। हजारों वर्षों से गांव के बड़े बड़े जमींदार हमारे नौजवानों की पत्नियों को पहले अपने पलंग पर सुलाते हैं। हमारी बेटियों को यह सौभाग्य प्राप्त नहीं होता कि वे दुल्हन बनकर अपने पति के पलंग पर सो सकें। इसके पहले जमींदार उनकी उज्जत लूटता है। हमारे घरों के बच्चे जो अपनी शादी करते हैं उनको यह सौभाग्य प्राप्त नहीं होता कि वे तब तक अपनी पत्नी के साथ सो सकें जब तक कि जमींदार उसकी अस्मत न लूट ले। आज अगर हमारे नौजवान गरीबों के बेटे इस सामाजिक अत्याचार के खिलाफ अपनी बुलन्द आवाज उठाते हैं तो उनको पकड़ कर जेल में बंद कर दिया जाता है। जब वे कहते हैं कि अब तुम्हें यह अधिकार नहीं रहेगा, हिन्दुस्तान में सभी बराबर हैं तथा सब हिन्दुस्तानी बराबरी के हैं तो उनके सीने पर गोली चलाते हैं। गोली मारने वाले कौन, गोली चलाने वाले कौन? हमारी बीघा जोतने वाले उनके बेटे, भतीजे, पोते, नाना और मौसा, कलक्टर और कमिश्नर के पद पर बैठे हुए हैं

और उन्हीं के भतीजे, चाचा, ताऊ एम० एल० ए० और एम० पी० बनकर मिनिस्टर की कुर्सी पर बैठते हैं, सांप, नाथ, नाग नाथ और भुजंग नाथ । जब हम अदालत के कटघरे में जाते हैं तो वहीं लोग अदालत की कुर्सी पर भी बैठे होते हैं, उन्हीं नाग नाथ और सांपनाथ के बच्चे वहां बैठे होते है तो वे हमें न्याय नही देते बल्कि वे उन अत्याचारों और अन्यायों को अपना समर्थन दे देते हैं। मैंने उच्चतम न्यायालय के मुख्य न्यायाधीश को पत्र लिखा था कि आप पटना हाई कोर्ट के बारे में जांच करें कि किस जज की अदालत में उसका भतीजा , बेटा, उन्होंने जो पेटीशंस दाखिल किये हैं उनमें से कितने उनके हक में गये हैं... (व्यवधान).... मैं सब की बात नही करता । मैं उनके बारे में कहता हूं कि जिनकी अदालत में उनके बेटे भतीजे, भगिना वकालत-नामा पर दस्तखत करते जाते है और बेल लेकर आते है । जस्टिस भगवती मिश्र, जस्टिस प्रभाशंकर मिश्र वे ब्राह्म० हैं लेकिन उनकी ईमानदारी, उनके चरित्र पर हमें कोई शंका नही है। हमें भरोसा है कि अगर ऐसे ईमानदार जज होंगे तो निश्चित रूप से लोगों को न्याय मिलेगा । लेकिन ऐसे भी जज हैं जिनके कागज निकालिये, उनका रिवार्ड गवाह है कि वे क्या हैं। उनके बेटे, भतीजे, भागिना, उनके रिश्तेदार वकालत नामा पर दस्तखत करके गये हैं और वे बेल लेकर निकले हैं और इसके कारण कितने ही अपराधियों को बेल मिल जाता है । पटना हाई कोर्ट में पिछले 25–30 वर्षों से मणिकलाल यादव जैसे कई दर्जन कुर्सी, बनिये और दूसरी जाति के सीनियर वकील है लेकिन आज तक उनके नाम सीनियर पैनल में नही आ सकता । क्योंकि वकीलो के सीनियर पैनल में से ही जजों की नियुक्ति होती हैं तो अगर उनका नाम सीनियर वकीलों के पैनल में नहीं होगा तो वह जज नहीं हो सकता । न रहेगा बांस और न बजेगी बांसुरी । जब सीनियर पैनल में नाम नही रहेगा तो उसका जस्टिस का क्लेम नहीं हो सकता । आप इसकी जांच कराइये । मैं केवल बात नहीं कहता बल्कि मैं आरोप लगाता हूं कि आपकी न्यायिक व्यवस्था ऐसी है जहां जजों की नियुक्ति में मुझे डाउट है और उनकी नियुक्ति जाति और धर्म की भावना से प्रेरित होकर की जाती है। और जाति के आधार पर ही उनकी प्रतिभा का मूल्यांकन किया जाता है । वहां कभी भी समाज को न्याय नही मिल सकता है । इसलिए भारद्वाज जी जो यह प्रस्ताव लाये हैं इसमें अगर यह भावना है कि हिन्दुस्तान में सामाजिक परिवर्तन लाया जाना चाहिए तो, श्रीमती इंदिरा गांधी, जो हमारी प्रधानमंत्री है उनका 20-सूत्रीय कार्यक्रम है । हम राजनैतिक तौर पर प्रधानमंत्री और कांग्रेस पार्टी की नीतियों की आलोचना करते है ; लेकिन मैं कहना चाहता हूं कि 20-सूत्री कार्यक्रम तो क्या अगर 20 सौ-सूत्री प्रोग्राम भी आप ले तो जब तक उस प्रोग्राम को चलाने वाला हमारा हथियार हमारे अनुकूल नहीं होगा तब तक समाज में परिवर्तन हो नहीं सकता । इसलिए मैं आपसे कहना चाहता हूं कि इसके लिए आप बदलिये आई० ए० एस० का चरित्र, इसके लिए आप बदलिये आई० पी० एस० का करेक्टर, बदलिये जूडिशियल सर्विस का करेक्टर और उसके साथ इस शासन व्यवस्था को चलाने वाले एम० एल० ए० और एम० पी० तथा सदन का चरित्र बदलिये। हिन्दुस्तान की झोंपड़ियों से, मधुओं की जाल से, पैसारियों की भट्टी से, हलवाहों के हल्के मूठ से और नाइयों के उस्तरे से हिन्दुस्तान के अंदर झोंपड़ि ...तों तथा महिलाओं से जब क्रांति की लपट निकलेगी और वहां से सत्ता पर पहुंचाने

[श्री हुक्म देव नारायण यादव]

वाले लोग निकलेंगे तभी सामान्य जन को न्याय और इंसाफ मिल सकेगा। लेकिन ये लाल लाल चेहरे वाले, गोरे गोरे चेहरे वाले, मोटे मोटे पेट वाले, खस की टट्टी में रहने वाले, बड़े बड़े बंगलों में रहने वाले, रानी के पेट से राजमहल में पैदा होने वाले लोग हिन्दुस्तान के गरीबों को कभी भी न्याय नहीं दे सकते क्योंकि वे खटमल हैं जिन्होंने हमेशा हमारा खून चूसा है। क्योंकि उनको गरीबों का खून चूसना आता है तो वे गरीबों की सहायता क्या करेंगे। उनके द्वारा गरीबों को न्याय नहीं मिल सकता है। इसलिये अगर आप चाहते हैं कि समाज बदले तो उसको इस आधार पर बदलिये।

आखिर में मैं आपसे एक निवेदन करना चाहता हूं कि समाज के लिये कानून बनता है कानून के लिये समाज नहीं बनता। आज कहा जाता है कि कानून के मुताबिक समाज चले समाज के मुताबिक कानून नहीं चलेगा। कोई कानून बनाएंगे तो कहां हैं कि कभी के मुताबिक समाज को चलाइये। कानून हैं।

अब मैं अन्तिम उदाहरण आपका दूंगा। हम किसान हैं। अभी गुजरात के भाई सीलिंग की बात कर रहे थे। समाजवादी होने के नाते मैं यह कहूंगा कि आप पांच एकड़, सात एकड़ लैंड की सीलिंग कर दें लेकिन सब पर बराबर से सीलिंग लागू होनी चाहिए। किसानों के ऊपर कानून बना दिया कि 17 एकड़ से ज्यादा सिंचित भूमि नहीं रहने देंगे। बिड़ला महाराज के लिए क्या कानून बना दिया 1947 में बिड़ला 45 करोड़ का मालिक था और 1984 में बिड़ला दो हजार करोड़ का मालिक बन सकता है उसके ऊपर नो सीलिंग। बिड़ला पर, टाटा पर, जे० के० सिंघानिया, डालमिया, चतवानिया, पनसारिया, गोयनका और सोपनका जितने हैं इनके ऊपर कोई सीलिंग नहीं, इनके ऊपर कोई पाबन्दी नहीं। पाबन्दी किस पर होगी, नरेन्द्र सिंह के ऊपर पाबन्दी, हुक्मदेव नारायण पर पाबन्दी, रामानन्द यादव पर पाबन्दी जो किसान हैं, जमीन जोतता है इनकी 17 एकड़ से ज्यादा सिंचित भूमि पर सीलिंग आफ लैंड। सिलिंग आफ लैंड का मतलब है सीलिंग आफ इन्कम। 17 एकड़ जमीन से जितनी आय होती है उससे अधिक आय हम नहीं कर सकते वह सीलिंग आफ लैंड नहीं है वह तो सीलिंग आफ इनकम है। हमारी सीलिंग आफ इनकम है, हमारी आय की हदबन्दी है और शहर में बसने वालों को आय की हदबन्दी नहीं होगी वह तो महल, बिल्डिंग पर बिल्डिंग बनाते जाएं और हमारे बड़े बड़े सरकारी अधिकारी सफेद पोश जिसको व्हाइट एलीफेंट कहते हैं जो स्वीडन में, डेनमार्क में, अमरीका और जापान में विभिन्न बैंकों में अपने पैसे को फंसा कर के रख सकते हैं उनके ऊपर कोई पाबन्दी नहीं है। मैं एक अंतिम बात कहकर प्रार्थना करूंगा दिल्ली में बसते हो, दिल्ली में देखते हो जो समाज को लूटने वाले हैं वही आज समाज के ऊपर सिर मौर बने बैठे हैं। भारद्वाज जी ने जो प्रस्ताव पेश किया है मैं तहे दिल से इसका समर्थन करता हूं और भारत सरकार से मांग करता हूं कि इस दिशा में वे कार्यवाही करें। माननीय जगन्नाथ कौशल जी से कहना हूं कि आपके दल के माननीय सदस्य ने जो प्रस्ताव पेश किया है आप बराबर कहा करते है कि विरोधी दल तो सत्ताधारी दल जो भी करता है उसका विरोध करते हैं अब तो सौभाग्य है कि सरकारी पार्टी के एक सदस्य ने जो प्रस्ताव पेश किया है और विरोध पक्ष का आदमी तहेदिल से उसका समर्थन कर रहा है आज तो हमारा समर्थन है इस प्रस्ताव को आप मान लीजिए और इस दिशा में कार्यवाही कराइये जिससे समाज के दबे हुए, कुचले हुए, शोषित पड़े हजारों लाखों करोड़ों वर्षों

से जिन्हें न्याय और इन्साफ नहीं मिला उनको न्याय मिल सके उन्हें समाज में जीने का अधिकार मिले । इन्हीं शब्दों के साथ में आपके प्रस्ताव का समर्थन करता हूं ।

SHRI SANKAR PRASAD MITRA: Madam Vice-Chairman, Roscoe Pound in his book *Social Control Through Legislation*—1942 Edition at page 20-said: "In the modern world, law has become the permanent agency of social control." Repeatedly it has been stated by our leaders that independent India aims to build a socialist society not through violent revolution but by process of gradual transformation of the society on the socialist lines. Law is bound, in these circumstances, to play a dominant role in bringing about social change through peaceful means. Unless, therefore, we have a judicial system for implementation of progressive laws, if and when entrenched or violated, the basic principle which sustains our Constitution is bound to collapse.

About two years ago, a debate had taken place in this House on the Ministry of Law, Justice and Company Affairs. Participating in the debate, I gave an outline of a scheme for restructuring of the Judiciary, and I am grateful to the Union Law Minister that he was good enough to write letters to me subsequently appreciating many of the aspects of the scheme which I sought to enunciate. I know that it has not been possible for the Union Law Minister to move effectively in this matter due to innumerable difficulties. For example, I suggested curtailment of the jurisdiction of the Supreme Court to (1) substantive questions of constitutional law; (2) resolution of conflicts of opinions of different High Courts; and (3) the advisory functions to the President. I am glad that Justice Baharul Islam in his speech has said things which justify my contention. I said that the Supreme Court should have no power to grant special leave to appeal under article 136 of the Constitution. And why did I say that the Supreme Court's power to grant leave under article 136 of the Constitution should be taken away? The reason is that an honourable member of the ruling party who is a practising lawyer of the Supreme Court—unfortunately, he is not present in the House today, but his speech in this House is there on record—pointed out on the floor of this very House that all that the Supreme Court was doing for the last few months was to dispose of only special leave petitions and public interest litigations and practically no time was available to the Supreme Court Judges for disposnig of regular appeals, civil or criminal. The result is arrears have been accumulating and, as Justice Baharul Islam has said, in the Supreme Court in January, 1984 more than 1,84,000 cases were pending. The hon. Member who raised this point insisted on legislation to stop public interest litigations, unheard of in the legal procedure of Anglo-Saxon jurisprudence which independent India has chosen to adopt.

Madam Vice-Chairman, I do not propose to impose my own views on this subject. But I intend to quote from a lecture delivered by an eminent jurist, one of the most experienced Judges, whose name I am unable to mention under the rules of this House because he happens to hold today one of the highest offices in the Union of India. In this lecture delivered at Pune on the 24th of October, 1983, this is what he had said. I quote.

> "The subject occurred to me when I was reading the April-June number of the Civil and Military Law Journal. The Editor paid fulsome praise to the new-fangled Public Interest Litigation and said this after mentioning the name of the judge who began it and the names of those who followed him."

This is the quotation from the Civil and Military Law Journal.

> "Bonded labourers, women workers, prisoners, juvenile inmates, tortured citizens, poor peasants and several other classes of sufferers are getting immediate judicial remedies in case they can move the court even through a letter."

Madam Vice-Chairman, I make it clear that personally I am not against Public Interest Litigation as such. But this Public Interest Litigation has to be carried to the doors of the poorest of the poor by taking it to the grass-root level and not at the level of the High Court and the Supreme Cours. And from that point of view

ri Sankar Prasad Mitra]

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with this eminent jurist who goes
I agree and I quote:
on to say

"I agree that such cases have begun
and ended but I wonder if there has
been the slig htest change in a general
way. Bonded labour continues still
because the labo ir has no other alterna-
tive. Women wor kers are still there and
so on. In fact, the litigation has made
a temporary splash nd then like the
water of a pond into which a stone
makes a ripple or two, hings have set-
tled down to the old co nditions. Not
even legislation has stoppe the evils of
third degree, the poor condit ion of jails,
the lot of the poor peasants and it is
too much to think that like Canute's
order to the waves of the ocean or the
Peopels bull to the Comet, this ju dicial
activism has halted these evils."

That is why, Madam Vice-Chairman, I said that at the Supreme Court level the sheer wastage of time or at the High Court level the sheer wastage of time on the so-called Public Interest Litigation is not serving the society at all, in my humble opinion.

The then Union Law Minister, Mr. Shiv Shankar, had given an assurance in this House from that very seat in which Mr. Jagannath Kaushal is sitting today, that a legislation was under contemplation to stop the Public Interest Litigation. But we do not know whether that legislation has yet seen the light of the day.

I say nothing more about the Supreme Court because my learned brother, Mr. Baharul Islam, has revealed matters much more dangerous, much more serious than what I could have possibly done.

I now come to the High Courts. What is the condition in the High Courts? The High Courts are overburdened with 226 applications. Large number of Judges are engaged to hear only 226 applications and all the Judges who are hearing 226 applications, very few are available for the disposal of the applications. Most of their time is taken up by dealing with the incoming applications for stay or injunction. The result is that we have terrific congestion in every High Court, more especially in the major High Courts in the country. I suggested in my scheme, Madam, that there should be restriction on the number of appeals. By the restriction on the number of appeals, I mean, there should not be more than one first appeal on law and facts and more than once second appeal on law alone. But under Article 136 on any and every matter a special leave to appeal may be granted from any judgment. It is being openly said perhaps as a sign of a progressiveness that if it is an appeal by a tenant against his landlord the appeal must be admitted irrespective of the merits of the appeal. That is supposed to be a method by a Judge of the highest court in the land can champion the cause of the poor. I suggested, Sir, very stringent conditions for the revision of applications and an appeal against technicalities. I suggested the formation of rural courts to give relief and succour to the rural poor, and I was indeed happy to read in the Calcutta newspapers more than once that the then Union Law Minister, Mr. Jagannath Kaushal had made public speeches supporting this idea of rural courts in the various Law Conferences and those speeches were elaborately reported in those papers. I know that nothing tangible would come before the next General Elections. But sooner or later I tell you, if we want to realise the dreams, aims and aspirations of the founding fathers of our Constitution bold and courageous steps have to be taken for restructurning of our entire judicial system with an eye to the poor people with the sole, exclusive or at any rate the principal purpose of serving the poor and from that point of view, I am inclined to support this Resolution moved by esteemed friend, Mr. Hansraj Bhardwaj. I thank you.

THE VICE-CHAIRMAN DR. (SHRIMATI) SAROJINI MAHISHIV: We have only two minutes left. I think Shri Husen Dalwai will have to conclude his speech before 5 o'clock.

SHRI HUSEN DALWAI (Maharashtra): Madam, Vice-Chairman, I rise to support the Resolution moved by my learned hon. friend and Member of this House,

Mr. Hansraj Bhardwaj. The delay in justice is a serious problem which we are facing today. The mounting of cases load in a vast country like ours which is the greatest democracy in the world, we have hardly 18 Judges in the Supreme Court to deliver justice to the entire country. The crux of the problem is that the Government has not taken a serious view of this matter. The laws that we are following are from the British age and they are also to be reformed. We have also to see that the pecuniary jurisdiction of the lower courts is enhanced. As Law Minister of Maharashtra, when I piloted a bill for giving more jurisdiction to the city civil court of Bombay, the High Court lawyers came to me saying that it should not be done and no proper justice should be given to the people because they insisted that the dual system should be continued. But we took a bold decision and the dual system was abolished. And thereafter we have raised the pecuniary jurisdiction of the city civil court to Rs. 50,000....

5 P.M.

THE VICE-CHAIRMAN (DR. (SHRIMATI) SAROJINI MAHISHI): It is 5 o'clock now. I request the hon. Member to continue his speech next time. Further discussion on the Resolution will continue on the 10th August.

CALLING ATTENTION TO A MATTER OF URGENT PUBLIC IMPORTANCE

Damage caused to life, Property and crops by recent floods in various parts of the Country —*contd.*—

THE VICE-CHAIRMAN (DR. (SHRIMATI) SAROJINI MAHISHI): Now, we shall take up the discussion on the Calling Attention. Mr. Dhabe will continue his speech.

SHRI S. W. DHABE: Madam Vice-Chairperson, I was referring to the statement of the Minister in reply to the Calling Attention notice. On page 2, he says:

"Whereas floods in Assam, Orissa, Tripura, Uttar Pradesh, Gujarat, Haryana, Bihar, Manipur and Kerala were on account of heavy rains, the floods in West Bengal have largely been caused by a breach in Mahananda river in Katihar district of Bihar, thus affecting districts like Malda in West Bengal."

Only Malda has been mentioned. I do not know what is the speciality of Malda to be mentioned in the statement. The damage by floods in West Bengal was very heavy and 16 districts of West Bengal have been affected like Howrah, Hooghly, 24-Parghanas and others. But we do not find any mention of them in the statement of the Minister. Today there was a question about floods and the States which have been affected and the estimated loss—Starred Question No. 89. The statement given in reply to that question gives the details. The worst affected is Orissa. About ten States are mentioned. All the States are not mentioned. I do not know why discrepancy is there between the reply to Starred Question No. 89 dated the 27th July, 1984, that is, today, and the statement given in response to the Calling Attention notice today. In the statement given in reply to the question, against item 10, West Bengal, it has been stated that 11 districts have been affected. But in the Calling Attention statement only Malda is mentioned. Why has this big, glaring dsicrepancy taken place? The number of villages affected in West Bengal is given as 1280. The total population affected is 63.06 lakhs. The total area affected is 16.48 lakh hectares. The total crop area affected is 3.27 lakh hectares. The value of the crop lost is Rs. 7061 lakhs. I am surpirsed at this. The loss seems to be very much underestimated. The loss of cattle heads is 385 and the loss of human lives is 26. These figures do not seem to be correct. This is the position regarding West Bengal. Though the Minister has been very prompt to say that they have given an *ad hoc* grant of Rs. 5 crores to Kerala, nothing has been said as to how much grant has been given to West Bengal for the floods. I am told that the West Bengal Govern-